

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,	)	
	)	
	)	
Plaintiff,	)	C.A. No. 16-122-LPS
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
GROUPON, INC.	)	
	)	
Defendant.	)	

**IBM’S FIRST NOTICE OF DEPOSITION TO GROUPON, INC.**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and the Local Rules of this Court, Plaintiff International Business Machines Corporation (“IBM”), by its counsel, will take the deposition upon oral examination of Defendant Groupon, Inc. (“Groupon”), regarding the subject matter set forth in the attached Schedule B, which shall be interpreted in accordance with the definitions set forth in the attached Schedule A.

The deposition will begin at 9:00 a.m. on June 7, 2017, at the office of Desmarais LLP, 230 Park Avenue, New York, New York 10169, or at such other time and place as may be agreed upon in writing by counsel for the parties. The examination will be taken before a Notary Public or other person authorized to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure, and will continue day to day until completed. The testimony at the deposition will be recorded by videographic, stenographic, audio, audiovisual, and/or real-time computer means.

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, Groupon shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to each of the topics set forth in the attached Schedule B. IBM requests

that Groupon identify the individual(s) who will testify regarding each topic at least one week in advance of the deposition.

You are invited to attend.

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

John M. Desmarais  
Jon T. Hohenthanner  
Karim Oussayef  
Laurie N. Stempler  
Robert C. Harrits  
Michael J. X. Matulewicz-Crowley  
Brian D. Matty  
DESMARAIS LLP  
230 Park Avenue  
New York, NY 10169  
Tel: (212) 351-3400

Dated: May 11, 2017  
5159939 / 43155

By: /s/ David E. Moore  
David E. Moore (#3983)  
Bindu A. Palapura (#5370)  
Stephanie E. O'Byrne (#4446)  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 N. Market Street  
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[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)  
[bpapura@potteranderson.com](mailto:bpapura@potteranderson.com)  
[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)

*Attorneys for Plaintiff International Business  
Machines Corporation*

**SCHEDULE A**  
**DEFINITIONS**

1. As used herein, “Patents-In-Suit” means United States Patent Nos. 5,796,967 (“the ’967 Patent”), 5,961,601 (“the ’601 Patent”), 7,072,849 (“the ’849 Patent”), and 7,631,346 (“the ’346 Patent”).

2. As used herein, “This Action” means the action under the caption International Business Machines Corporation v. Groupon, Inc., Civil Action No. 16-cv-122-LPS-CJB, in the United States District Court for the District of Delaware.

3. As used herein, “Defendant” “You,” and “Your” means Groupon, Inc. and includes any predecessors, divisions, departments, subsidiaries, parents, affiliates, present or former officers, directors, employees, agents, counsel, representatives, and others authorized to act on behalf of Groupon, Inc.

4. As used herein, “Accused Instrumentality” means any product, application, service, or method accused by IBM of infringing any claim of any of the Patents-In-Suit under any subsection of 35 U.S.C. § 271, including without limitation all products identified in IBM’s Preliminary Identification of Accused Products served October 7, 2016 (including any supplements or amendments thereto), IBM’s Preliminary Infringement Contentions served January 20, 2017 and March 24, 2017 (including any supplements or amendments thereto), and all products identified by Groupon in response to IBM’s First Set of Interrogatories to Groupon No. 1 served November 22, 2016.

5. As used herein, “Prior Art” has the same meaning as used in 35 U.S.C. § 101 et seq., and includes any patent, printed publication, knowledge, use, sale or offer for sale, or other act or event defined in 35 U.S.C. §§ 102 or 103, taken singly or in combination.

6. As used herein, “include” and “including” shall be construed to mean “without limitation,” so as to acquire the broadest possible meaning.

7. As used herein, “communication” means any transmission of information by one or more persons and/or between two or more persons by any means, including telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, other computer linkups, written memoranda, and face-to-face conversations.

8. As used herein, “and” and “or” shall be construed conjunctively and disjunctively, so as to acquire the broadest possible meaning.

9. As used herein, “any” and “all” shall each be construed to mean “each and every,” so as to acquire the broadest possible meaning.

10. The singular and masculine form of a noun or pronoun shall embrace, and shall be read and applied as, the plural or the feminine or neuter, as the particular context makes appropriate and to give the noun or pronoun the broadest possible meaning.

11. As used herein, “document” has the same broad meaning as in Rule 34 of the Federal Rules of Civil Procedure. The term “document” also encompasses tangible things.

12. As used herein, “person” means any natural person or any business, legal, or governmental entity or association.

13. As used herein, “concerning” or “relating to” means, without limitation, identifying, describing, discussing, concerning, assessing, stating, reflecting, constituting, containing, embodying, tending to support or refute, or referring directly or indirectly to the particular subject matter identified.

14. As used herein, the terms “Complaint,” “Answer,” and “Affirmative Defense,” shall mean the pleadings as originally filed or as amended or supplemented throughout the progression of the case.

15. As used herein, the term “Source Code” means any software, markup language files, style sheet language files, template language files, programming language files,

configuration files, source code, object code, or other electronic information for directing the operation of a computer, mobile device, website, web browser, or for processing electronic data, including but not limited to computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, other translator, or other data processing module. This definition includes, but is not limited to, JavaScript, Java, Java Server Pages (JSP), Active Server Pages (ASP) (including .Net ASP), VBScript, C++, C, C#, Objective-C, Swift, Python, Mustache, CoffeeScript, Ruby, SQL or other query languages, PostScript, Jade, Apache Velocity Templates, HTML, CSS, XML, batch files, and shell scripts.

16. As used herein, the term “URI” means uniform resource identifier.

17. As used herein, the term “URL” means uniform resource locator.

18. As used herein, the term “Source Code Computer” means the laptop You have made available for inspection in This Action in accordance with paragraph 12 of the Protective Order in this litigation (D.I. 24).

19. As used herein “financial data” means any and all information related to Your finances, including but not limited to information concerning revenues, costs, and profits.

20. As used herein, the term “Transaction Event” means any revenue-generating event, including but not limited to user queries, search hit clicks, use of coupons or offers, reservation bookings, completion of reservations (i.e., reservations that are not cancelled or no-show reservations), ad-related bookings, covers, advertisement impressions, advertisement clicks, or purchases.

**SCHEDULE B**  
**TOPICS**

1. The location, type, and organization of documents in Your possession, custody, and control that show, describe, or illustrate how the Accused Instrumentalities have, from 2010 to the present:

- a. generated URLs, URIs, or hyperlinks;
- b. allowed users to Sign In and create user accounts, including by using information or data about users from Google or Facebook;
- c. delivered content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. used content delivery networks, including those provided by Akamai Technologies, Inc.

2. The location, identity, and type of control panels, consoles, dashboards, and interfaces related to (a) configuring any parameters related to caching and (b) configuring content delivery networks, such as those provided by Akamai Technologies, Inc.

3. The location, type, and organization of documents in Your possession, custody, and control that show, describe, or illustrate the topology of the networks that support the Accused Instrumentalities or deliver content relevant to the Accused Instrumentalities.

4. The location, identity, and type of financial data, including financial data concerning the Accused Instrumentalities and Transaction Events, in Your possession, custody, or control, and the manner in which such financial data is recorded, organized, stored, analyzed, reported, and distributed.

5. The location and identity of license agreements in Your possession, custody, or control, and the manner in which such license agreements are organized and stored.

6. The location, identity, and type of documents reflecting Your licensing policies and practices in Your possession, custody, or control, and the manner in which such documents are organized, stored, and distributed.

7. The location, identity, and type of documents reflecting consumer feedback and/or survey results concerning the Accused Instrumentalities in Your possession, custody, or control, and the manner in which such documents are organized, stored, and distributed.

8. The location, identity, and type of documents reflecting Your marketing strategies and practices concerning the Accused Instrumentalities in Your possession, custody, or control, and the manner in which such documents are prepared, organized, stored, and distributed.

9. The location, identity, and type of information in Your possession, custody, or control concerning Transaction Events, and the manner in which such information is recorded, organized, analyzed, reported, and distributed.

10. The source(s) of the documents You have produced to date.

11. The identity and type of the documents accessible on each of the non-custodial data sources identified in Your ESI Disclosures or that were the source of the documents You have produced to date.

12. Your document retention policies and practices from 2010 to the present.

13. The identity, title, and responsibilities of the three people most knowledgeable about the financial data in Your possession, custody, or control.

14. The identity, title, and responsibilities of the three people most knowledgeable about how the Accused Instrumentalities have, from 2010 to the present:

- a. generated URLs, URIs, or hyperlinks;
- b. allowed users to Sign In and create user accounts, including by using information or data about users from Google or Facebook;



- c. delivered content, including HTML, web pages, java script, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. used content delivery networks, such as the one operated by Akamai Technologies, Inc.

# **EXHIBIT 2**

**Michael Matulewicz-Crowley**

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**From:** Robert Harrits  
**Sent:** Friday, June 2, 2017 1:31 PM  
**To:** Jessica Benzler; IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Karim Oussayef  
**Cc:** Phillip Haack; David Hadden; Adam Lewin; [jday@ashby-geddes.com](mailto:jday@ashby-geddes.com); [Groupon\\_IBM\\_Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com); Saina Shamilov; Sapna Mehta  
**Subject:** RE: Groupon-IBM (Del.) - 30(b)(6) Witness

Counsel,

Can you please let us know the name of the individual Groupon will be putting up for IBM's noticed 30(b)(6) deposition next week Wednesday at our offices.

In addition, please let us know whether the Google Drive/Google Vault that was searched using searched terms contains non-technical documents so that we can propose appropriate additional search terms if necessary.

Thank you,  
Robert

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**From:** Robert Harrits  
**Sent:** Wednesday, May 31, 2017 2:38 PM  
**To:** 'Jessica Benzler'; IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Karim Oussayef  
**Cc:** Phillip Haack; David Hadden; Adam Lewin; [jday@ashby-geddes.com](mailto:jday@ashby-geddes.com); [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com); Saina Shamilov  
**Subject:** Groupon-IBM (Del.) - 30(b)(6) Witness

Counsel,

IBM's First Notice of Deposition to Groupon, Inc., served on May 11, 2017, requested Groupon identify which individual or individuals would be testifying regarding topics 1-14 a week before the deposition. IBM noticed the deposition for June 7, 2017 at 9 am in the Offices of Desmarais LLP. As today is one week before the notice date, please inform IBM of who will be testifying so that we can adequately prepare for the deposition.

Regards,  
Robert

Robert C. Harrits | Desmarais LLP  
230 Park Avenue | New York, NY 10169  
Tel: (212) 808-2946 | Fax: (212) 351-3401  
Email: [rharrits@desmaraisllp.com](mailto:rharrits@desmaraisllp.com)

# **EXHIBIT 3**

**Alexandra Kochian**

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**From:** Sapna Mehta <smehta@fenwick.com>  
**Sent:** Friday, June 23, 2017 6:10 PM  
**To:** Robert Harrits; Phillip Haack; Laurie Stempler; Groupon\_IBM\_Service@Fenwick.com  
**Cc:** IBM Groupon Service; dmoore@potteranderson.com; bpalapura@potteranderson.com; Day, John G. (jday@ashby-geddes.com); OByrne, Stephanie E. (sobyne@potteranderson.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Robert,

The witness is Sarah Baldwin and the deposition will take place at Fenwick's office in San Francisco. The address is: 555 California Street 12th Floor, San Francisco, CA 94104.

Sapna

---

**From:** Robert Harrits [mailto:RHarrits@desmaraisllp.com]  
**Sent:** Friday, June 23, 2017 1:37 PM  
**To:** Sapna Mehta <smehta@fenwick.com>; Phillip Haack <phaack@fenwick.com>; Laurie Stempler <LStempler@desmaraisllp.com>; Groupon\_IBM\_Service@Fenwick.com  
**Cc:** IBM Groupon Service <IBMGrouponService@desmaraisllp.com>; dmoore@potteranderson.com; bpalapura@potteranderson.com; Day, John G. (jday@ashby-geddes.com) <jday@ashby-geddes.com>; OByrne, Stephanie E. (sobyne@potteranderson.com) <sobyne@potteranderson.com>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Sapna,

Next Thursday, June 29, 2017 in San Francisco works for IBM. Please let us know the name of the witness and the location of the deposition so we can adequately prepare and arrange for a court reporter.

Thank you,  
Robert

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**From:** Sapna Mehta [<mailto:smehta@fenwick.com>]  
**Sent:** Friday, June 23, 2017 4:26 PM  
**To:** Phillip Haack; Robert Harrits; Laurie Stempler; [Groupon\\_IBM\\_Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)); OByrne, Stephanie E. ([sobyne@potteranderson.com](mailto:sobyne@potteranderson.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Robert,

Groupon's 30(b)(6) designee for IBM's First Notice of Deposition is available next Thursday, June 29 in San Francisco. Please let us know as soon as possible if that date will not work.

Regards,  
Sapna

---

**From:** Phillip Haack  
**Sent:** Wednesday, June 21, 2017 6:15 PM  
**To:** 'Robert Harrits' <[RHarrits@desmaraisllp.com](mailto:RHarrits@desmaraisllp.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)) <[jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)>; OByrne, Stephanie E. ([sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)) <[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Robert,

Groupon expects to offer dates for its 30(b)(6) designee on IBM's first notice by the end of the week. With respect to the Groupon source code, the export is still in progress. Groupon anticipates that the export should complete tomorrow, at which point Groupon will have to remove certain irrelevant sensitive information (such as the credit card processing environment) and then transfer the code to Fenwick to make available for inspection. If you would like to discuss the details, please let me know. Groupon is currently collecting documents based on the search terms provided by IBM last week and hopes to produce the responsive non-privileged documents resulting from that search by the end of next week. With respect to the financial documents, Groupon is not using search terms to collect additional financial and marketing documents, but is collecting based on the search terms relating to financial and marketing documents identified in your email of last week.

Regards,  
Phil

---

**From:** Robert Harrits [<mailto:RHarrits@desmaraisllp.com>]  
**Sent:** Tuesday, June 20, 2017 6:46 AM  
**To:** Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)) <[jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)>; OByrne, Stephanie E. ([sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)) <[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Phil,

To clarify, I meant Wednesday June 21, 2017 not Wednesday June 19.

Robert

---

**From:** Robert Harrits  
**Sent:** Monday, June 19, 2017 11:11 PM  
**To:** Laurie Stempler; Phillip Haack; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)); OByrne, Stephanie E. ([sobyne@potteranderson.com](mailto:sobyne@potteranderson.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Phil,

I write to follow up on a number of outstanding items. First, please provide the date, the location, and the name of Groupon's 30(b)(6) witness who will testify to the topics in IBM's First Notice of Deposition to Groupon. IBM served its notice well over a month ago on May 11, 2017 (D.I. 73), noticed the deposition for June 7, 2017 (*id.*), and, after conferring with Groupon, further confirmed its intent to go forward with the deposition. See June 7, 2017 Email from R. Harrits to P. Haack. Please provide a date and location, as well as the name of the witness, by Wednesday, June 19, 2017 so that IBM can make arrangements and properly prepare for the deposition.

Second, during our meet and confer you indicated that Groupon expected to have all of the additional source code loaded on the Source Code Computer by early this week. Please let us know the code's status, so IBM can make arrangements for its expert to inspect the new code. We would appreciate an update by Wednesday, June 19, so we can make the necessary travel arrangements.

Third, please let us know whether Groupon has run the search terms IBM proposed pursuant to paragraph 5(b) of the ESI order in my June 14, 2017 email and when IBM can expect the production of those documents from Google Drive/Vault and JIRA.

Finally, following up on Laurie's email below, please let us know by Wednesday of this week if Groupon intends to search for financial and marketing documents using search terms. As you know, IBM has the option to propose additional search terms pursuant to paragraph 5(b) and expects that any documents that hit on IBM's proposed terms will be included in the production Groupon told the Court it would produce by the end of this month.

Regards,  
Robert

---

**From:** Laurie Stempler  
**Sent:** Friday, June 16, 2017 10:35 AM  
**To:** Phillip Haack; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Phil,

Thanks for your email. Given that the Court ordered Groupon to produce such documents by the end of the month and that IBM has the opportunity to review and add terms to your list under Paragraph 5(b), please disclose any such terms by early next week.

Laurie

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Thursday, June 15, 2017 9:10 PM  
**To:** Laurie Stempler; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Laurie,

If Groupon uses search terms to locate additional financial and marketing documents for production, it will disclose those terms to IBM pursuant to Court's standard for discovery.

Best,  
Phil

---

**From:** Laurie Stempler [<mailto:LStempler@desmaraisllp.com>]  
**Sent:** Wednesday, June 14, 2017 6:08 PM  
**To:** [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)) <[jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Counsel,

I am following up on my email from last week. Will you be using search terms to locate the documents that the Court ordered Groupon to produce? If so, please identify them.

Regards,  
Laurie

---

**From:** Laurie Stempler  
**Sent:** Friday, June 9, 2017 12:29 PM  
**To:** [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com) ([Groupon IBM Service@fenwick.com](mailto:Groupon_IBM_Service@fenwick.com))  
**Cc:** IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com))  
**Subject:** IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Counsel,

I write regarding the Court's order at the June 5, 2017 hearing that Groupon produce the financial and marketing documents that IBM has requested by the end of this month. Please identify any search terms that Groupon intends to use to locate such documents pursuant to Paragraph 5(b) of the Court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information."

Regards,  
Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3423  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

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# **EXHIBIT 4**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT 5**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,	)	
	)	
	)	
Plaintiff,	)	C.A. No. 16-122-LPS
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
GROUPON, INC.	)	
	)	
Defendant.	)	

**IBM’S SECOND NOTICE OF DEPOSITION TO GROUPON, INC.**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and the Local Rules of this Court, Plaintiff International Business Machines Corporation (“IBM”), by its counsel, will take the deposition upon oral examination of Defendant Groupon, Inc. (“Groupon”), regarding the subject matter set forth in the attached Schedule B, which shall be interpreted in accordance with the definitions set forth in the attached Schedule A.

The deposition will begin at 9:30 a.m. on July 12, 2017, at the office of Desmarais LLP, 230 Park Avenue, New York, New York 10169, or at such other time and place as may be agreed upon in writing by counsel for the parties. The examination will be taken before a Notary Public or other person authorized to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure, and will continue day to day until completed. The testimony at the deposition will be recorded by videographic, stenographic, audio, audiovisual, and/or real-time computer means.

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, Groupon shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to each of the topics set forth in the attached Schedule B. IBM requests that Groupon identify the individual(s) who will testify regarding each topic at least one week in advance of the deposition.

You are invited to attend.

OF COUNSEL:

John M. Desmarais  
Jon T. Hohenthauer  
Karim Oussayef  
Laurie N. Stempler  
Robert C. Harrits  
Michael J. X. Matulewicz-Crowley  
Brian D. Matty  
DESMARAIS LLP  
230 Park Avenue  
New York, NY 10169  
Tel: (212) 351-3400

Dated: June 20, 2017  
5252481 / 43155

POTTER ANDERSON & CORROON LLP

By: /s/ Bindu A. Palapura  
David E. Moore (#3983)  
Bindu A. Palapura (#5370)  
Stephanie E. O'Byrne (#4446)  
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[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)

*Attorneys for Plaintiff International Business  
Machines Corporation*

**SCHEDULE A**  
**DEFINITIONS**

1. As used herein, “Patents-in-Suit” means United States Patent Nos. 5,796,967 (“the ’967 Patent”), 5,961,601 (“the ’601 Patent”), 7,072,849 (“the ’849 Patent”), and 7,631,346 (“the ’346 Patent”).
2. As used herein, “This Action” means the action under the caption *International Business Machines Corporation v. Groupon, Inc.*, Civil Action No. 16-cv-00122-LPS-CJB, in the United States District Court for the District of Delaware.
3. As used herein, “Defendant,” “You,” and “Your” means Groupon, Inc. and includes any predecessors, divisions, departments, subsidiaries, parents, affiliates, present or former officers, directors, employees, agents, counsel, representatives, and others authorized to act on behalf of Groupon, Inc.
4. As used herein, “Accused Instrumentality” means any product, application, service, or method accused by IBM of infringing any claim of any of the Patents-in-Suit under any subsection of 35 U.S.C. § 271, including without limitation all products identified in IBM’s Preliminary Identification of Accused Products served October 7, 2016 (including any supplements or amendments thereto), IBM’s Preliminary Infringement Contentions served January 20, 2017 and March 24, 2017 (including any supplements or amendments thereto), and all products identified by Groupon in response to IBM’s First Set of Common Interrogatories to Groupon No. 1, served November 22, 2016.
5. As used herein, “Prior Art” has the same meaning as used in 35 U.S.C. § 101 et seq., and includes any patent, printed publication, knowledge, use, sale or offer for sale, or other act or event defined in 35 U.S.C. §§ 102 or 103, taken singly or in combination.
6. As used herein, “include” and “including” shall be construed to mean “without limitation,” so as to acquire the broadest possible meaning.

7. As used herein, “communication” means any transmission of information by one or more persons and/or between two or more persons by any means, including telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, other computer linkups, written memoranda, and face-to-face conversations.

8. As used herein, “and” and “or” shall be construed conjunctively and disjunctively, so as to acquire the broadest possible meaning.

9. As used herein, “any” and “all” shall each be construed to mean “each and every,” so as to acquire the broadest possible meaning.

10. The singular and masculine form of a noun or pronoun shall embrace, and shall be read and applied as, the plural or the feminine or neuter, as the particular context makes appropriate and to give the noun or pronoun the broadest possible meaning.

11. As used herein, “document” has the same broad meaning as in Rule 34 of the Federal Rules of Civil Procedure. The term “document” also encompasses tangible things.

12. As used herein, “person” means any natural person or any business, legal, or governmental entity or association.

13. As used herein, “concerning” or “relating to” means, without limitation, identifying, describing, discussing, concerning, assessing, stating, reflecting, constituting, containing, embodying, tending to support or refute, or referring directly or indirectly to the particular subject matter identified.

14. As used herein, the terms “Complaint,” “Answer,” and “Affirmative Defense” shall mean the pleadings as originally filed or as amended or supplemented throughout the progression of the case.

15. As used herein, the term “Source Code” means any software, markup language files, style sheet language files, template language files, programming language files, configuration files, source code, object code, or other electronic information for directing the operation of a computer,



mobile device, website, web browser, or for processing electronic data, including but not limited to computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, other translator, or other data processing module. This definition includes, but is not limited to, JavaScript, Java, Java Server Pages (JSP), Active Server Pages (ASP) (including .Net ASP), VBScript, C++, C, C#, Objective-C, Swift, Python, SQL or other query languages, PostScript, Jade, Apache Velocity Templates, HTML, CSS, XML, batch files, and shell scripts.

16. As used herein, the term “URI” means uniform resource identifier.

17. As used herein, the term “URL” means uniform resource locator.

18. As used herein, the term “Source Code Computer” means the laptop You have made available for inspection in This Action in accordance with Paragraph 12 of the Protective Order in this litigation (D.I. 24).

19. As used herein, “financial data” means any and all information related to Your finances, including but not limited to information concerning revenues, costs, and profits.

20. As used herein, the term “Transaction Event” means any revenue-generating event, including but not limited to user queries, search hit clicks, use of Groupons, coupons, or offers, reservation bookings, completion of reservations (i.e., reservations that are not cancelled or no-show reservations), ad-related bookings, covers, advertisement impressions, advertisement clicks, or purchases (including but not limited to purchases of Groupons).

21. As used herein, the term “data source” means database, wiki, file store, intranet site, data repository, network location, document management system, or other data collection used to access and/or maintain documents.

**SCHEDULE B**  
**TOPICS**

1. The way in which each of your Accused Instrumentalities:
  - a. generate URLs, URIs, or hyperlinks;
  - b. allow users to “Sign In”/“Sign Up” and create user accounts, including by using information or data about users from Google or Facebook;
  - c. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
  - d. set parameters related to caching; and
  - e. use content delivery networks, including those provided by Akamai Technologies, Inc.
  
2. The earliest date that the accused features and functionalities of the Accused Instrumentalities, identified in IBM’s January 20, 2017 and March 24, 2017 Preliminary Infringement Contentions, were implemented, and in particular:
  - a. The date(s) on which You first implemented the ability to cache or store content, including but not limited to menus, images, videos, browser-supported source code (such as JavaScript), and advertisements at each of the Accused Instrumentalities;
  - b. The date(s) on which You first implemented the process of embedding information into hyperlinks, internet addresses, URLs, or URIs at each of the Accused Instrumentalities; and

c. The date(s) on which You first made available to users the option to create an account, at each of the Accused Instrumentalities, using Facebook and/or Google login credentials.

3. All changes to the accused features and functionalities of the Accused Instrumentalities identified in IBM's January 20, 2017 and March 24, 2017 Preliminary Infringement Contentions, beginning on the earliest date that such accused features and functionalities were implemented (i.e., the dates identified in response to Topic 2 herein) through the present and any planned future changes to such features and functionalities, including but not limited to any changes made as a result of learning of the Patents-in-Suit.

4. The identity and functionality of the source code that affects how each of the Accused Instrumentalities:

- a. generate URLs, URIs, or hyperlinks;
- b. allow users to "Sign In"/"Sign Up" and create user accounts, including by using information or data about users from Google or Facebook;
- c. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. use content delivery networks, including those provided by Akamai Technologies, Inc.

5. The identity, functionality, and configuration of any third-party software, hardware, or service, including by not limited to Akamai, Facebook, Google, Amazon Web Services, Fastly, Apache, Optimizely, Varnish, and Edgecast, that affects how each of your Accused Instrumentalities:

- a. generate URLs, URIs, or hyperlinks;
- b. allow users to “Sign In”/“Sign Up” and create user accounts, including by using information or data about users from Google or Facebook;
- c. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. use content delivery networks, including those provided by Akamai Technologies, Inc.

6. Agreements between You and any third party related to how each of your

Accused Instrumentalities:

- a. generate URLs, URIs, or hyperlinks;
- b. allow users to “Sign In”/“Sign Up” and create user accounts, including by using information or data about users from Google or Facebook;
- c. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. use content delivery networks, including those provided by Akamai Technologies, Inc.

7. The identity, functionality, topology, and configuration of any servers, including third-party servers, that deliver content to users.

8. The number of user accounts at each of the Accused Instrumentalities, created on a monthly basis, from 2010 and continuing through the present.

9. On a monthly basis, the total number of Transaction Events made using the Accused Instrumentalities from 2010 to the present.

10. On a monthly basis, the number of Transaction Events made through the Accused Instrumentalities by users whose accounts were linked to Facebook and/or Google login credentials from 2010 to the present.

11. On a monthly basis, the number of Transaction Events made through the Accused Instrumentalities by users who were logged in using Facebook and/or Google login credentials from 2010 to the present.

12. On a monthly basis, the total number of unique and non-unique (i.e., returning) visitors to the Accused Instrumentalities, the number of unique and non-unique visitors who disabled cookies, and the percentage of unique and non-unique visitors who disabled cookies from 2010 to the present.

13. On a monthly basis, the number of unique and non-unique visitors who disabled caching in their web browser and the percentage of unique and non-unique visitors who disabled caching in their web browser.

14. The categories of information stored in cookies regarding visitors to the Accused Instrumentalities.

15. Any analyses of the impact of latency on users of the Accused Instrumentalities, such as measurements or assessments of the impact of latency on click-through rates, Transaction Event conversions, completed Transaction Events, and abandoned Transaction Events.

16. Control panels, consoles, dashboards, or interfaces for any hosting, caching, or content delivery network service (e.g., Akamai, Fastly, Amazon s3, Amazon, Google, Edgecast), whether in-house or through a third-party for the Accused Instrumentalities.

17. Any caching-related instructions or configuration settings in each version of the Accused Instrumentalities (such as Cache-Control, Edge-Control, Pragma, ETag, no-store, no-cache, must-revalidate, max-age, or downstream-ttl) that are set or modified by You or a third party.

18. The identity of, and the location on the Source Code Computer of, any HTML template files that are used to generate content for each version of the Accused Instrumentalities.

19. The URL(s), URI(s), or other portions of the Accused Instrumentalities generated by each HTML template file found on the Source Code Computer.

20. The process by which any HTML template files on the Source Code Computer are used to generate content for the Accused Instrumentalities.

21. The HTTP methods (e.g., GET, POST) used in the Accused Instrumentalities to interact with Your servers.

22. The data formats (e.g., JSON, xml) used in the Accused Instrumentalities to interact with Your servers.

23. The parameters and variables (including user IDs, session IDs, and deal IDs) located in hyperlinks in the Accused Instrumentalities.

24. The communications (e.g., HTTP requests and responses, API calls) between Google or Facebook, Your servers, and the clients or browsers accessing the Accused Instrumentalities, when users “Sign In” to, “Log In” to, “Sign Up” for, or create their user account using Facebook or Google.

25. Your communications and/or interactions with IBM concerning the Patents-in-Suit prior to March 2, 2016.

26. Your communications with third parties concerning IBM, the Patents-in-Suit, and/or This Action.

27. Any attempts you have made to avoid infringement or design around the Patents-in-Suit.

28. The actual or anticipated cost of avoiding infringement or designing around the Patents-in-Suit.

29. Any allegedly non-infringing alternatives to the inventions claimed in the Patents-in-Suit and the cost and acceptability of such allegedly non-infringing alternatives in the marketplace.

30. Your knowledge of the Patents-in-Suit, including but not limited to: (i) how and when such awareness came about, (ii) any analysis performed by You or for You to determine whether You infringe the Patents-in-Suit, whether the Patents-in-Suit are valid or enforceable, or whether You should seek to obtain a license to the Patents-in-Suit, (iii) when any such analysis was performed and the persons involved, and (v) any documents that discuss, refer to, or comprise the same.

31. Any opinion of counsel (whether oral or written) with respect to the Patents-in-Suit, and the documents that discuss, refer to, or comprise the same.

32. The factual bases for all of Your defenses (including all affirmative defenses), counterclaims, or requests for relief.

# **EXHIBIT 6**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,	)	
	)	
	)	
Plaintiff,	)	C.A. No. 16-122-LPS
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
GROUPON, INC.	)	
	)	
Defendant.	)	

**IBM’S THIRD NOTICE OF DEPOSITION TO GROUPON, INC.**

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and the Local Rules of this Court, Plaintiff International Business Machines Corporation (“IBM”), by its counsel, will take the deposition upon oral examination of Defendant Groupon, Inc. (“Groupon”), regarding the subject matter set forth in the attached Schedule B, which shall be interpreted in accordance with the definitions set forth in the attached Schedule A.

The deposition will begin at 9:30 a.m. on July 19, 2017, at the office of Desmarais LLP, 230 Park Avenue, New York, New York 10169, or at such other time and place as may be agreed upon in writing by counsel for the parties. The examination will be taken before a Notary Public or other person authorized to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure, and will continue day to day until completed. The testimony at the deposition will be recorded by videographic, stenographic, audio, audiovisual, and/or real-time computer means.

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, Groupon shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to each of the topics set forth in the attached Schedule B. IBM requests

that Groupon identify the individual(s) who will testify regarding each topic at least one week in advance of the deposition.

You are invited to attend.

OF COUNSEL:

John M. Desmarais  
Jon T. Hohenthanner  
Karim Oussayef  
Laurie N. Stempler  
Robert C. Harrits  
Michael J. X. Matulewicz-Crowley  
Brian D. Matty  
DESMARAIS LLP  
230 Park Avenue  
New York, NY 10169  
Tel: (212) 351-3400

Dated: June 20, 2017  
5252482 / 43155

POTTER ANDERSON & CORROON LLP

By: /s/ Bindu A. Palapura  
David E. Moore (#3983)  
Bindu A. Palapura (#5370)  
Stephanie E. O'Byrne (#4446)  
Hercules Plaza, 6<sup>th</sup> Floor  
1313 N. Market Street  
Wilmington, DE 19801  
Tel: (302) 984-6000  
[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)  
[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)  
[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com)

*Attorneys for Plaintiff International Business  
Machines Corporation*

**SCHEDULE A**  
**DEFINITIONS**

1. As used herein, “Patents-In-Suit” means United States Patent Nos. 5,796,967 (“the ’967 Patent”), 5,961,601 (“the ’601 Patent”), 7,072,849 (“the ’849 Patent”), and 7,631,346 (“the ’346 Patent”).
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3. As used herein, “Defendant,” “You,” and “Your” means Groupon, Inc. and includes any predecessors, divisions, departments, subsidiaries, parents, affiliates, present or former officers, directors, employees, agents, counsel, representatives, and others authorized to act on behalf of Groupon, Inc.
4. As used herein, “Accused Instrumentality” means any product, application, service, or method accused by IBM of infringing any claim of any of the Patents-In-Suit under any subsection of 35 U.S.C. § 271, including without limitation all products identified in IBM’s Preliminary Identification of Accused Products served October 7, 2016 (including any supplements or amendments thereto), IBM’s Preliminary Infringement Contentions served January 20, 2017 and March 24, 2017 (including any supplements or amendments thereto), and all products identified by Groupon in response to IBM’s First Set of Common Interrogatories to Groupon No. 1, served November 22, 2016.
5. As used herein, “Prior Art” has the same meaning as used in 35 U.S.C. § 101 et seq., and includes any patent, printed publication, knowledge, use, sale or offer for sale, or other act or event defined in 35 U.S.C. §§ 102 or 103, taken singly or in combination.
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7. As used herein, “communication” means any transmission of information by one or more persons and/or between two or more persons by any means, including telephone conversations, letters, telegrams, teletypes, telexes, telecopies, electronic mail, other computer linkups, written memoranda, and face-to-face conversations.

8. As used herein, “and” and “or” shall be construed conjunctively and disjunctively, so as to acquire the broadest possibly meaning.

9. As used herein, “any” and “all” shall each be construed to mean “each and every,” so as to acquire the broadest possibly meaning.

10. The singular and masculine form of a noun or pronoun shall embrace, and shall be read and applied as, the plural or the feminine or neuter, as the particular context makes appropriate and to give the noun or pronoun the broadest possible meaning.

11. As used herein, “document” has the same broad meaning as in Rule 34 of the Federal Rules of Civil Procedure. The term “document” also encompasses tangible things.

12. As used herein, “person” means any natural person or any business, legal, or governmental entity or association.

13. As used herein, “concerning” or “relating to” means, without limitation, identifying, describing, discussing, concerning, assessing, stating, reflecting, constituting, containing, embodying, tending to support or refute, or referring directly or indirectly to the particular subject matter identified.

14. As used herein, the terms “Complaint,” “Answer,” and “Affirmative Defense” shall mean the pleadings as originally filed or as amended or supplemented throughout the progression of the case.

15. As used herein, the term “Source Code” means any software, markup language files, style sheet language files, template language files, programming language files, configuration files,

source code, object code, or other electronic information for directing the operation of a computer, mobile device, website, web browser, or for processing electronic data, including but not limited to computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, other translator, or other data processing module. This definition includes, but is not limited to, JavaScript, Java, Java Server Pages (JSP), Active Server Pages (ASP) (including .Net ASP), VBScript, C++, C, C#, Objective-C, Swift, Python, SQL or other query languages, PostScript, Jade, Apache Velocity Templates, HTML, CSS, XML, batch files, and shell scripts.

16. As used herein, the term “URI” means uniform resource identifier.

17. As used herein, the term “URL” means uniform resource locator.

18. As used herein, the term “Source Code Computer” means the laptop You have made available for inspection in This Action in accordance with Paragraph 12 of the Protective Order in this litigation (D.I. 24).

19. As used herein, “financial data” means any and all information related to Your finances, including but not limited to information concerning revenues, costs, and profits.

20. As used herein, the term “Transaction Event” means any revenue-generating event, including but not limited to user queries, search hit clicks, use of Groupons, coupons, or offers, reservation bookings, completion of reservations (i.e., reservations that are not cancelled or no-show reservations), ad-related bookings, covers, advertisement impressions, advertisement clicks, or purchases (including but not limited to purchases of Groupons).

21. As used herein, the term “data source” means database, wiki, file store, intranet site, data repository, network location, document management system, or other data collection used to access and/or maintain documents.

**SCHEDULE B**  
**TOPICS**

1. All revenues (including but not limited to advertising revenue), costs, and sources (including geographic sources) thereof derived by You from, for, or concerning the Accused Instrumentalities, from March 2010 to the present.
2. The identity, content, and interpretation of the annual profit and loss statements for Your business unit(s) responsible for each of the Accused Instrumentalities.
3. Your pricing policies, strategies, and practices concerning the Accused Instrumentalities.
4. Business plans, marketing strategies, go-to-market plans, market projections, and competitive analyses concerning the Accused Instrumentalities.
5. Any evaluation, study, analysis, or investigation about how users interact with the Accused Instrumentalities, including:
  - a. the extent to which users interact with the Accused Instrumentalities, including total visitors, unique visitors, non-unique (i.e., returning) visitors, pages per session, session duration, and conversions;
  - b. how users interact with the Accused Instrumentalities to search for services and/or navigate through options to make a purchase and/or reservation;
  - c. how users interact with the Accused Instrumentalities to create, “Sign In,” “Sign Up,” or “Log In” to user accounts using Facebook, Google, or any other third-party platform; and
  - d. how users interact with the Accused Instrumentalities to store, cache, or interact with any advertisements or menus on the Accused Instrumentalities.

6. The bases for customer demand or preference for each Accused Instrumentality, including users' preferences for interacting with the Accused Instrumentalities to:

- a. search for services and/or navigate through options to make a purchase and/or reservation where user identification, transaction identification, or other state information is maintained;
- b. create, "Sign In," "Sign Up," or "Log In" to user accounts using Facebook, Google, or any other third-party platform; and
- c. store, cache, or interact with any advertisements, images, or menus on the Accused Instrumentalities.

7. Usage data or metrics for the Accused Instrumentalities, such as the extent to which users interact with the Accused Instrumentalities to:

- a. search for services and/or navigate through options to make a purchase and/or reservation where user identification, transaction identification, deal identification, session identification, or other state information is maintained;
- b. create, "Sign In," "Sign Up," or "Log In" to user accounts using Facebook, Google, or any other third-party platform; and
- c. store, cache, or interact with any advertisements, images, or menus on the Accused Instrumentalities.

8. Any policy, procedure, practice, or program related to licensing (in-bound or out-bound) or use of intellectual property by Groupon, including both written and unwritten policies, procedures, practices, or programs, further including but not limited to patent licensing efforts and Groupon's criteria for taking or offering a license to a patent.

9. The identity, content, interpretation, negotiation, and decision to enter into: (a) any patent license that you have identified or produced in This Action (b) any patent license that pertains to any aspect of any of the Accused Instrumentalities, or (c) any patent license pools that you have entered or in which you have invested.

10. From 2010 to the present, on a monthly basis, for each of the Accused Instrumentalities:

- a. The number of queries for deals and/or “Groupons” performed by users in the United States;
- b. The number and nature (i.e., description) of Transaction Events that generated the revenue produced in This Action and the amount of revenue generated by such Transaction Events; and
- c. The number and nature (i.e., description) of advertising-related Transaction Events, such as, for example, purchase of deals and/or Groupons as a result of clicking on advertisements (including but not limited to third-party advertisements) on the Accused Instrumentalities and the revenues resulting from such advertisements.



# **EXHIBIT 7**

**Alexandra Kochian**

---

**From:** Karim Oussayef  
**Sent:** Monday, July 10, 2017 9:22 AM  
**To:** Sapna Mehta; Phillip Haack; Groupon\_IBM\_Service@Fenwick.com  
**Cc:** IBM Groupon Service; dmoore@potteranderson.com; bpalapura@potteranderson.com; Day, John G. (jday@ashby-geddes.com); OByrne, Stephanie E. (sobyryne@potteranderson.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Counsel,

Please let us know when you are available for a meet and confer today or tomorrow to discuss these issues.

Best,  
Karim

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 6, 2017 4:09 PM  
**To:** Sapna Mehta; Phillip Haack; Groupon\_IBM\_Service@Fenwick.com  
**Cc:** IBM Groupon Service; dmoore@potteranderson.com; bpalapura@potteranderson.com; Day, John G. (jday@ashby-geddes.com); OByrne, Stephanie E. (sobyryne@potteranderson.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Counsel,

First, we are still waiting for a response to Robert's June 29, 2017 letter. Please address the issues from that letter by the end of the day tomorrow.

Second, please confirm deposition dates and provide witness names for IBM's Second and Third Deposition Notices to Groupon. Those depositions are noticed for the next two weeks and we need to confirm travel plans.

Third, please produce native copies of Groupon's Weekly Business Reviews (e.g. GROUP028444, GROUP093569) and "NA Email and CRM" documents (e.g. GROUP028545, GROUP028548). The versions of those documents that you have produced contain illegible text (e.g. middle of GROUPON093569) and/or text hidden in collapsible elements (e.g. bottom of GROUPON028550).

Thanks,  
Karim

---

**From:** Robert Harrits  
**Sent:** Thursday, June 29, 2017 11:20 AM  
**To:** Sapna Mehta; Phillip Haack; [Groupon\\_IBM\\_Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); Day, John G. ([jday@ashby-geddes.com](mailto:jday@ashby-geddes.com)); OByrne, Stephanie E. ([sobyryne@potteranderson.com](mailto:sobyryne@potteranderson.com))  
**Subject:** IBM v. Groupon, C.A. No. 16-cv-00122-LPS-CJB (D. Del.)

Counsel,

Please see attached correspondence.

Regards,  
Robert

Robert C. Harrits | Desmarais LLP  
230 Park Avenue | New York, NY 10169  
Tel: (212) 808-2946 | Fax: (212) 351-3401  
Email: [rharrits@desmaraisllp.com](mailto:rharrits@desmaraisllp.com)

# **EXHIBIT 8**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT 9**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT 10**



**Michael Matulewicz-Crowley**

---

**From:** Laurie Stempler  
**Sent:** Wednesday, July 26, 2017 11:48 AM  
**To:** smehta@fenwick.com; phaack@fenwick.com; Groupon\_IBM\_Service@Fenwick.com (Groupon\_IBM\_Service@fenwick.com)  
**Cc:** IBM Groupon Service; bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com)  
**Subject:** IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)  
**Attachments:** GROUP0002777-2792.pdf

Counsel,

I write regarding several outstanding discovery-related disputes.

First, we have not yet received Groupon's supplemental interrogatory responses, despite your previous commitment to serve them last Friday, nor have we received a response to my reminder email from this past Monday. Please either provide the supplemental responses or provide your availability to meet and confer tomorrow after 3 PM ET.

We have also not received confirmation that Groupon will produce the native versions of the Weekly Business Reviews and NA Email and CRM documents. Although our respective support teams have worked together to try to sort out the technical issues, we are still unable to view the documents as produced. As I mentioned on Monday (after failed attempts to sort out the technical issue), the most efficient way forward would be for Groupon to produce the native files with a DAT overlay. Please confirm that you will do so or confirm your availability to meet and confer.

Thank you for serving your amended initial disclosures. Please confirm that you have completed your collection and production of documents from the Groupon employees that you identified in those disclosures.

Please provide an update on your efforts to identify 30(b)(6) witnesses and their availability for deposition, along with the availability of the 30(b)(1) witnesses that we noticed.

Documents in Groupon's production reference additional relevant documentation that appears to not have been produced. For example, the attached Operational Readiness Review document states that the users-service is documented at a github repository. (See the highlighted link at the top of p.3 of the attached document.) Please confirm that you will produce this documentation – and all other relevant github documentation, including that requested by Robert Harrits in his July 21<sup>st</sup> email – by the end of next week.

Finally, please provide an update on when we can expect production of all relevant documents from Splunk, Grapher, and Basecamp, as requested in Robert's email.

We are available to meet and confer on the above issues tomorrow any time after 3 PM ET. Please confirm your availability and we will circulate a dial-in number.

Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue

New York, NY 10169

(212) 351-3423

[Istempler@desmaraisllp.com](mailto:Istempler@desmaraisllp.com)

# **EXHIBIT 11**

## Michael Matulewicz-Crowley

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 27, 2017 1:59 PM  
**To:** Laurie Stempler; smehta@fenwick.com; phaack@fenwick.com; Groupon\_IBM\_Service@Fenwick.com (Groupon\_IBM\_Service@fenwick.com)  
**Cc:** IBM Groupon Service; bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We have not gotten a response to our last three emails. Could you please let us know when you are available to meet and confer today? There are several outstanding discovery issues and we need to understand whether Groupon has made any progress in resolving them.

Best,  
Karim

Karim Z. Oussayef

**DESMARAIS LLP**  
230 Park Avenue  
New York, NY 10169  
T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Laurie Stempler  
**Sent:** Wednesday, July 26, 2017 11:48 AM  
**To:** [smehta@fenwick.com](mailto:smehta@fenwick.com); [phaack@fenwick.com](mailto:phaack@fenwick.com); [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com) ([Groupon IBM Service@fenwick.com](mailto:Groupon_IBM_Service@fenwick.com))  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

I write regarding several outstanding discovery-related disputes.

First, we have not yet received Groupon's supplemental interrogatory responses, despite your previous commitment to serve them last Friday, nor have we received a response to my reminder email from this past Monday. Please either provide the supplemental responses or provide your availability to meet and confer tomorrow after 3 PM ET.

We have also not received confirmation that Groupon will produce the native versions of the Weekly Business Reviews and NA Email and CRM documents. Although our respective support teams have worked together to try to sort out the technical issues, we are still unable to view the documents as produced. As I mentioned on Monday (after failed attempts to sort out the technical issue), the most efficient way forward would be for Groupon to produce the native files with a DAT overlay. Please confirm that you will do so or confirm your availability to meet and confer.

Thank you for serving your amended initial disclosures. Please confirm that you have completed your collection and production of documents from the Groupon employees that you identified in those disclosures.

Please provide an update on your efforts to identify 30(b)(6) witnesses and their availability for deposition, along with the availability of the 30(b)(1) witnesses that we noticed.

Documents in Groupon's production reference additional relevant documentation that appears to not have been produced. For example, the attached Operational Readiness Review document states that the users-service is documented at a github repository. (See the highlighted link at the top of p.3 of the attached document.) Please confirm that you will produce this documentation – and all other relevant github documentation, including that requested by Robert Harrits in his July 21<sup>st</sup> email – by the end of next week.

Finally, please provide an update on when we can expect production of all relevant documents from Splunk, Grapher, and Basecamp, as requested in Robert's email.

We are available to meet and confer on the above issues tomorrow any time after 3 PM ET. Please confirm your availability and we will circulate a dial-in number.

Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3423  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

# **EXHIBIT 12**

## Michael Matulewicz-Crowley

---

**From:** Phillip Haack <phaack@fenwick.com>  
**Sent:** Thursday, July 27, 2017 4:40 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; Groupon\_IBM\_Service@Fenwick.com  
**Cc:** IBM Groupon Service; bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon made a production of the requested native files yesterday.

We will provide dates for Groupon's 30(b)(6) witnesses shortly, and can confirm that we will be putting up at least Phil Dunham and Damien Schmitz the week of August 7 in Chicago. With respect to the other 30(b)(1) notices, we are tracking down witness availability. I will note that Kyle Oppenheim has left Groupon.

We will investigate the documents mentioned in Laurie's email. Based on the URL in the document she forwarded, we expect that the referenced document will be in the forthcoming production of GitHub wiki documents collected along with the source code.

With respect to Splunk, Grapher, and Basecamp, we are not yet aware of any non-redundant documents in those repositories.

We are available to confer after 2pm Pacific/5pm Eastern today, or tomorrow before 1:30 Eastern or after 3:30 pm Eastern.

Best,  
Phil

---

**From:** Karim Oussayef [mailto:KOussayef@desmaraisllp.com]  
**Sent:** Thursday, July 27, 2017 10:59 AM  
**To:** Laurie Stempler <LStempler@desmaraisllp.com>; Sapna Mehta <smehta@fenwick.com>; Phillip Haack <phaack@fenwick.com>; Groupon\_IBM\_Service@Fenwick.com  
**Cc:** IBM Groupon Service <IBMGrouponService@desmaraisllp.com>; bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com) <JDay@ashbygeddes.com>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We have not gotten a response to our last three emails. Could you please let us know when you are available to meet and confer today? There are several outstanding discovery issues and we need to understand whether Groupon has made any progress in resolving them.

Best,

Karim

Karim Z. Oussayef

**DESMARAIS LLP**

230 Park Avenue

New York, NY 10169

T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Laurie Stempler

**Sent:** Wednesday, July 26, 2017 11:48 AM

**To:** smehta@fenwick.com; phaack@fenwick.com; Groupon\_IBM\_Service@Fenwick.com  
(Groupon\_IBM\_Service@fenwick.com)

**Cc:** IBM Groupon Service; bpalapura@potteranderson.com; dmoore@potteranderson.com;  
sobyne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com)

**Subject:** IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

I write regarding several outstanding discovery-related disputes.

First, we have not yet received Groupon's supplemental interrogatory responses, despite your previous commitment to serve them last Friday, nor have we received a response to my reminder email from this past Monday. Please either provide the supplemental responses or provide your availability to meet and confer tomorrow after 3 PM ET.

We have also not received confirmation that Groupon will produce the native versions of the Weekly Business Reviews and NA Email and CRM documents. Although our respective support teams have worked together to try to sort out the technical issues, we are still unable to view the documents as produced. As I mentioned on Monday (after failed attempts to sort out the technical issue), the most efficient way forward would be for Groupon to produce the native files with a DAT overlay. Please confirm that you will do so or confirm your availability to meet and confer.

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Please provide an update on your efforts to identify 30(b)(6) witnesses and their availability for deposition, along with the availability of the 30(b)(1) witnesses that we noticed.

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Finally, please provide an update on when we can expect production of all relevant documents from Splunk, Grapher, and Basecamp, as requested in Robert's email.

We are available to meet and confer on the above issues tomorrow any time after 3 PM ET. Please confirm your availability and we will circulate a dial-in number.

Laurie



Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3423  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

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''

**GZJ DKV'35''**

## Michael Matulewicz-Crowley

---

**From:** Jessica Benzler <jbenzler@fenwick.com>  
**Sent:** Wednesday, August 2, 2017 8:13 PM  
**To:** Karim Oussayef; Laurie Stempler; IBM Groupon Service  
**Cc:** bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com); Phillip Haack; Sapna Mehta; Groupon\_IBM\_Service@Fenwick.com  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)  
**Attachments:** 2017 08 02 Responses and Objections to IBM's Second Notice of Deposition of Groupon.pdf; 2017 08 02 Responses and Objections to IBM's Third Notice of Deposition of Groupon.pdf

Your attachments have been security checked by Mimecast Attachment Protection. Files where no threat or malware was detected are attached.

---

Counsel,

Attached please find Groupon's Responses and Objections to IBM's Second and Third Notices of Deposition. Pursuant to Rule 30(b)(6), Groupon designates the following witnesses on the topics listed:

Damien Schmitz (Deposition on August 9, 2017):

- Second Notice Topics: 25, 26, 30, 31
- Third Notice Topics: 1, 2, 8, 9,

Phillip Dunham (Deposition on August 10, 2017):

- Second Notice Topics: 1-7, 14-24, 27-29

Both of these depositions will take place at Marshall, Gerstein & Borun LLP:

233 South Wacker Drive  
6300 Willis Tower  
Chicago, IL 60606-6357

Regards,  
Jessica



**JESSICA BENZLER**

Fenwick & West LLP  
Associate, Litigation Group

☎ (650) 335-7279

☎ (415) 281-1350

✉ jbenzler@fenwick.com

---

**From:** Karim Oussayef [mailto:KOussayef@desmaraisllp.com]

**Sent:** Wednesday, August 02, 2017 10:52 AM

**To:** Phillip Haack <phaack@fenwick.com>; Laurie Stempler <LStempler@desmaraisllp.com>; Sapna Mehta <smehta@fenwick.com>; Groupon\_IBM\_Service@Fenwick.com

**Cc:** IBM Groupon Service <IBMGrouponService@desmaraisllp.com>; bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com) <JDay@ashbygeddes.com>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We accept those dates. Could you please confirm the topics for which each witness is designated?

Thanks,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Wednesday, August 2, 2017 12:49 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Damien Schmitz for is available on the 9th and Phil Dunham on the 10<sup>th</sup>.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Wednesday, August 02, 2017 6:38 AM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We have not heard back from you. Once again, we request that you confirm the availability of Groupon's witnesses so that our team can prepare and make travel plans. Please let us know today.

Regards,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Monday, July 31, 2017 8:35 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon agrees to produce relevant responsive documents in the witnesses' possession to the extent they have not yet been produced. I can confirm we are putting up Phil Dunham and Damien Schmitz next week in Chicago and expect to have final confirmation of dates tomorrow.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Monday, July 31, 2017 7:02 AM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Could you please confirm the availability of Groupon's witnesses to sit for deposition next week so that our team can prepare and make travel plans?

Also, could you please answer my question below? We want to understand whether we have a disagreement about Groupon's obligations to search for and produce documents from relevant witnesses.

Thanks,  
Karim

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 27, 2017 9:45 PM  
**To:** Phillip Haack; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

You state: "I represented that we had or would check with witnesses about the location of relevant responsive non-duplicative documents and, to the extent those documents had not been collected, collect and produce them. I explicitly rejected IBM's suggested that Groupon is obligated to collect personal or non-central documents for every witness that IBM has noticed a deposition for unless those documents would reveal unique information material to the case." Could you please clarify what you are agreeing to do and what you are not agreeing to do? Are you agreeing to produce documents that your witnesses identify but not if they are "personal" or "non-central"?

We are in agreement about the deadlines for final contentions. We will draft a proposed stipulation.

I will check with my team about the native documents and get back to you.

Best,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Thursday, July 27, 2017 9:20 PM  
**To:** Karim Oussayef <[KOussayef@desmaraisllp.com](mailto:KOussayef@desmaraisllp.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

I wanted to clarify our position on additional documents from the people IBM has noticed. I represented that we had or would check with witnesses about the location of relevant responsive non-duplicative documents and, to the extent those documents had not been collected, collect and produce them. I explicitly rejected IBM's suggested that Groupon is obligated to collect personal or non-central documents for every witness that IBM has noticed a deposition for unless those documents would reveal unique information material to the case. Groupon maintains that such a collection is not proportional to the needs of the case.

With respect to IBM's request to move out the date for its final infringement contentions, Groupon will agree if it has an equal extension of time for its invalidity contentions. Your current proposal would move IBM's deadline out four weeks and Groupon's three.

Finally, the additional documents you mentioned in your email were produced in redacted form due to privilege issues, so we cannot produce the native files. The original TIFF production documents appear to us to be fully legible. If your team is having trouble viewing them, we are willing to explore other formats, such as the color TIFF or PDF documents proposed previously. Please let me know if you'd like to discuss.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, July 27, 2017 4:05 PM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Thanks for conferring with us about outstanding discovery issues. We agreed on the following:

1. Groupon will offer witnesses to testify about IBM's technical and financial 30(b)(6) topics during the week of August 7th.
2. Groupon will offer a witness to testify about IBM's marketing 30(b)(6) topics during the week of August 14th.
3. We tentatively scheduled Damien Shmitz to testify on financial topics on August 10 and Phil Dunham to testify on technical topics on August 11, both in Chicago. Groupon expects to offer the marketing witness in Seattle.
4. Groupon will diligently search for and produce documents from each witness before the date of their deposition, to the extent it has not already.
5. Groupon will diligently search for and produce relevant non-duplicative documents from Splunk, Grapher, and Basecamp, before the week of August 7.
6. Groupon is diligently working to produce wiki documents from GitHub and will endeavor to produce them before the week of August 7.
7. Groupon will serve a supplemental response to Interrogatory No. 7 today and expects to serve a supplemental response to Interrogatory No. 10 tomorrow.
8. The parties will confer about the necessity of taking the depositions of certain witness, including Soo, Sighn, and Oppenheim.
9. In light of the depositions scheduled in August, you will check with your client about agreeing to extend the deadline for IBM's Final Infringement Contention until August 25. We are amenable to extending the deadline for Groupon's Final Invalidity Contentions until September 18 as part of that agreement.

Finally, the following documents did not make it into Groupon's production of native documents. Please produce them in native form:

GROUP028695  
GROUP028702  
GROUP029648

Please let me know if you disagree with any aspects of my summary.

Thanks,  
Karim

**Karim Z. Oussayef**

**DESMARAIS LLP**

230 Park Avenue  
New York, NY 10169  
T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 27, 2017 4:52 PM  
**To:** Phillip Haack; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Thanks for your response. Let's confer at 5:30 ET.

Conference number: (866) 835-1224  
Conference code: 511 566 5982

Best,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Thursday, July 27, 2017 4:40 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon made a production of the requested native files yesterday.

We will provide dates for Groupon's 30(b)(6) witnesses shortly, and can confirm that we will be putting up at least Phil Dunham and Damien Schmitz the week of August 7 in Chicago. With respect to the other 30(b)(1) notices, we are tracking down witness availability. I will note that Kyle Oppenheim has left Groupon.

We will investigate the documents mentioned in Laurie's email. Based on the URL in the document she forwarded, we expect that the referenced document will be in the forthcoming production of GitHub wiki documents collected along with the source code.

With respect to Splunk, Grapher, and Basecamp, we are not yet aware of any non-redundant documents in those repositories.

We are available to confer after 2pm Pacific/5pm Eastern today, or tomorrow before 1:30 Eastern or after 3:30 pm Eastern.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, July 27, 2017 10:59 AM  
**To:** Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com);



[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
<[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We have not gotten a response to our last three emails. Could you please let us know when you are available to meet and confer today? There are several outstanding discovery issues and we need to understand whether Groupon has made any progress in resolving them.

Best,  
Karim

**Karim Z. Oussayef**

**DESMARAIS LLP**

230 Park Avenue

New York, NY 10169

T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Laurie Stempler

**Sent:** Wednesday, July 26, 2017 11:48 AM

**To:** [smehta@fenwick.com](mailto:smehta@fenwick.com); [phaack@fenwick.com](mailto:phaack@fenwick.com); [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
([Groupon IBM Service@fenwick.com](mailto:Groupon_IBM_Service@fenwick.com))

**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))

**Subject:** IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

I write regarding several outstanding discovery-related disputes.

First, we have not yet received Groupon's supplemental interrogatory responses, despite your previous commitment to serve them last Friday, nor have we received a response to my reminder email from this past Monday. Please either provide the supplemental responses or provide your availability to meet and confer tomorrow after 3 PM ET.

We have also not received confirmation that Groupon will produce the native versions of the Weekly Business Reviews and NA Email and CRM documents. Although our respective support teams have worked together to try to sort out the technical issues, we are still unable to view the documents as produced. As I mentioned on Monday (after failed attempts to sort out the technical issue), the most efficient way forward would be for Groupon to produce the native files with a DAT overlay. Please confirm that you will do so or confirm your availability to meet and confer.

Thank you for serving your amended initial disclosures. Please confirm that you have completed your collection and production of documents from the Groupon employees that you identified in those disclosures.

Please provide an update on your efforts to identify 30(b)(6) witnesses and their availability for deposition, along with the availability of the 30(b)(1) witnesses that we noticed.

Documents in Groupon's production reference additional relevant documentation that appears to not have been produced. For example, the attached Operational Readiness Review document states that the users-service is

documented at a github repository. (See the highlighted link at the top of p.3 of the attached document.) Please confirm that you will produce this documentation – and all other relevant github documentation, including that requested by Robert Harrits in his July 21<sup>st</sup> email – by the end of next week.

Finally, please provide an update on when we can expect production of all relevant documents from Splunk, Grapher, and Basecamp, as requested in Robert's email.

We are available to meet and confer on the above issues tomorrow any time after 3 PM ET. Please confirm your availability and we will circulate a dial-in number.

Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3423  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

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This email may contain confidential and privileged material for the use of the intended recipient. Any review,

use, or distribution by anyone other than the addressee is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and delete all copies of this message.

# **EXHIBIT 14**

## Michael Matulewicz-Crowley

---

**From:** Robert Harrits  
**Sent:** Saturday, August 5, 2017 1:32 PM  
**To:** Phillip Haack; Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service  
**Cc:** bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com); Sapna Mehta; Groupon\_IBM\_Service@Fenwick.com  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

I write to summarize yesterday's meet and confer. Please let me know if you disagree with anything below:

### Regarding IBM's Second 30(b)(6) Notice

- Topic 6 – Groupon agreed to provide a witness to testify on all agreements except those that you allege to be privileged, and on the existence of any agreements that you allege to be privileged.
- Topic 7 – Groupon agreed to provide a witness to testify on the functionality and configuration of servers that deliver content to Groupon's users.
- Topic 9 – Groupon agreed to provide a witness to testify on the total number of revenue-generating transaction events made using the Accused Instrumentalities.
- Topic 10 – Groupon agreed to provide a witness to testify on the total number of revenue-generating transaction events made by users whose accounts were linked to Facebook and/or Google login credentials.
- Topic 11 – Groupon agreed to provide a witness to testify generally as to what transaction events Groupon tracks and the number of transaction events for a particular year. Groupon refused to provide a witness to testify about the specific raw data on a month-by-month basis.
- Topic 30 – Groupon agreed to provide a witness to testify about all non-privileged information related to this topic.
- Topic 32 – Groupon refused to provide a witness on Topic 32 at this time.

### Regarding IBM's Third 30(b)(6) Notice

- Topic 3 – Groupon agreed that its "marketing" witness would be prepared to testify on this topic.
- Topic 7 - Groupon agreed to provide a witness to testify generally on what usage data Groupon tracks and the number of transaction events for a particular year. Groupon refused to provide a witness to testify about the specific raw data on a month by month basis.
- Topic 9 – Groupon agreed to provide a witness to testify on “any patent license that Groupon has identified or produced in this matter, any patent license which relates to technology claimed by the patents-in-suit, or any patent license which relates to the allegedly infringing aspects of the accused Groupon instrumentalities.” Groupon refused to provide a witness to testify on all patent licenses that cover Groupon's website.
- Topic 10 – Groupon agreed to provide a witness to testify on revenue-generating transaction events, Groupon's mobile applications, and its website.

Please let us know as soon as possible when Groupon will make a witness available on the topics that have not yet been designated.

Regards,  
Robert

**From:** Robert Harrits  
**Sent:** Friday, August 4, 2017 1:40 PM  
**To:** Phillip Haack; Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service  
**Cc:** bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com); Sapna Mehta; Groupon\_IBM\_Service@Fenwick.com  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We can meet at 2 pm pacific/ 5 pm eastern. We can use the following dial in:  
Dial-in: 866.835.1224  
Conference Code 4682626058

Thanks,  
Robert

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Friday, August 4, 2017 12:59 PM  
**To:** Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service  
**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' (JDay@ashbygeddes.com); Sapna Mehta; [Groupon\\_IBM\\_Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

We are available at 12:15pm Pacific/3:15pm Eastern today, or after 2pm Pacific. Groupon will be designating Mr. Schmitz on topics 4, 5, 6 and 9 and Mr. Dunham on topic 2 from IBM's first notice. The remaining topic, 6, regarding customer feedback, will be handled by Groupon's marketing witness.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, August 03, 2017 4:45 PM  
**To:** Jessica Benzler <[jbenzler@fenwick.com](mailto:jbenzler@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>  
**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' (JDay@ashbygeddes.com) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>; Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon\\_IBM\\_Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We accept your invitation to meet and confer. Please let us know when you are available tomorrow to discuss Groupon's responses to at least topics 6, 7, 9, 10, 11, 30, and 32 from IBM's Second Notice and topics 3, 7, 9, and 10 from IBM's Third Notice.

Please let us know what topics Damien Schmitz and Phillip Dunham will address from IBM's First Deposition Notice to Groupon. You previously agreed that your "substantive" witnesses would testify about the topics Ms. Baldwin was unable to address at her deposition (nos. 2, 4, 5, 6, 7, and 9).

Thanks,  
Karim

---

**From:** Jessica Benzler [<mailto:jbenzler@fenwick.com>]  
**Sent:** Wednesday, August 2, 2017 8:13 PM  
**To:** Karim Oussayef; Laurie Stempler; IBM Groupon Service  
**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyryne@potteranderson.com](mailto:sobyryne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)); Phillip Haack; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Mimecast Attachment Protection has created safe copies of your attachments.

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Counsel,

Attached please find Groupon's Responses and Objections to IBM's Second and Third Notices of Deposition. Pursuant to Rule 30(b)(6), Groupon designates the following witnesses on the topics listed:

Damien Schmitz (Deposition on August 9, 2017):

- Second Notice Topics: 25, 26, 30, 31
- Third Notice Topics: 1, 2, 8, 9,

Phillip Dunham (Deposition on August 10, 2017):

- Second Notice Topics: 1-7, 14-24, 27-29

Both of these depositions will take place at Marshall, Gerstein & Borun LLP:

233 South Wacker Drive  
6300 Willis Tower  
Chicago, IL 60606-6357

Regards,  
Jessica



**JESSICA BENZLER**  
Fenwick & West LLP  
Associate, Litigation Group  
☎ (650) 335-7279  
🏠 (415) 281-1350  
✉ [jbenzler@fenwick.com](mailto:jbenzler@fenwick.com)

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Wednesday, August 02, 2017 10:52 AM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com);

[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
<[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We accept those dates. Could you please confirm the topics for which each witness is designated?

Thanks,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Wednesday, August 2, 2017 12:49 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Damien Schmitz for is available on the 9th and Phil Dunham on the 10<sup>th</sup>.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Wednesday, August 02, 2017 6:38 AM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
<[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We have not heard back from you. Once again, we request that you confirm the availability of Groupon's witnesses so that our team can prepare and make travel plans. Please let us know today.

Regards,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Monday, July 31, 2017 8:35 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com);



[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon agrees to produce relevant responsive documents in the witnesses' possession to the extent they have not yet been produced. I can confirm we are putting up Phil Dunham and Damien Schmitz next week in Chicago and expect to have final confirmation of dates tomorrow.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]

**Sent:** Monday, July 31, 2017 7:02 AM

**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Could you please confirm the availability of Groupon's witnesses to sit for deposition next week so that our team can prepare and make travel plans?

Also, could you please answer my question below? We want to understand whether we have a disagreement about Groupon's obligations to search for and produce documents from relevant witnesses.

Thanks,  
Karim

---

**From:** Karim Oussayef

**Sent:** Thursday, July 27, 2017 9:45 PM

**To:** Phillip Haack; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

You state: "I represented that we had or would check with witnesses about the location of relevant responsive non-duplicative documents and, to the extent those documents had not been collected, collect and produce them. I explicitly rejected IBM's suggested that Groupon is obligated to collect personal or non-central documents for every witness that IBM has noticed a deposition for unless those documents would reveal unique information material to the case." Could you please clarify what you are agreeing to do and what you are not agreeing to do? Are you agreeing to produce documents that your witnesses identify but not if they are "personal" or "non-central"?

We are in agreement about the deadlines for final contentions. We will draft a proposed stipulation.

I will check with my team about the native documents and get back to you.

Best,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]

**Sent:** Thursday, July 27, 2017 9:20 PM

**To:** Karim Oussayef <[KOussayef@desmaraisllp.com](mailto:KOussayef@desmaraisllp.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

I wanted to clarify our position on additional documents from the people IBM has noticed. I represented that we had or would check with witnesses about the location of relevant responsive non-duplicative documents and, to the extent those documents had not been collected, collect and produce them. I explicitly rejected IBM's suggested that Groupon is obligated to collect personal or non-central documents for every witness that IBM has noticed a deposition for unless those documents would reveal unique information material to the case. Groupon maintains that such a collection is not proportional to the needs of the case.

With respect to IBM's request to move out the date for its final infringement contentions, Groupon will agree if it has an equal extension of time for its invalidity contentions. Your current proposal would move IBM's deadline out four weeks and Groupon's three.

Finally, the additional documents you mentioned in your email were produced in redacted form due to privilege issues, so we cannot produce the native files. The original TIFF production documents appear to us to be fully legible. If your team is having trouble viewing them, we are willing to explore other formats, such as the color TIFF or PDF documents proposed previously. Please let me know if you'd like to discuss.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]

**Sent:** Thursday, July 27, 2017 4:05 PM

**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Thanks for conferring with us about outstanding discovery issues. We agreed on the following:

1. Groupon will offer witnesses to testify about IBM's technical and financial 30(b)(6) topics during the week of August 7th.
2. Groupon will offer a witness to testify about IBM's marketing 30(b)(6) topics during the week of August 14th.
3. We tentatively scheduled Damien Shmitz to testify on financial topics on August 10 and Phil Dunham to testify on technical topics on August 11, both in Chicago. Groupon expects to offer the marketing witness in Seattle.
4. Groupon will diligently search for and produce documents from each witness before the date of their deposition, to the extent it has not already.
5. Groupon will diligently search for and produce relevant non-duplicative documents from Splunk, Grapher, and Basecamp, before the week of August 7.
6. Groupon is diligently working to produce wiki documents from GitHub and will endeavor to produce them before the week of August 7.
7. Groupon will serve a supplemental response to Interrogatory No. 7 today and expects to serve a supplemental response to Interrogatory No. 10 tomorrow.
8. The parties will confer about the necessity of taking the depositions of certain witness, including Soo, Sighn, and Oppenheim.
9. In light of the depositions scheduled in August, you will check with your client about agreeing to extend the deadline for IBM's Final Infringement Contention until August 25. We are amenable to extending the deadline for Groupon's Final Invalidity Contentions until September 18 as part of that agreement.

Finally, the following documents did not make it into Groupon's production of native documents. Please produce them in native form:

GROUP028695  
GROUP028702  
GROUP029648

Please let me know if you disagree with any aspects of my summary.

Thanks,  
Karim

**Karim Z. Oussayef**

**DESMARAIS LLP**

230 Park Avenue  
New York, NY 10169  
T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 27, 2017 4:52 PM  
**To:** Phillip Haack; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Thanks for your response. Let's confer at 5:30 ET.

Conference number: (866) 835-1224  
Conference code: 511 566 5982

Best,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Thursday, July 27, 2017 4:40 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon made a production of the requested native files yesterday.

We will provide dates for Groupon's 30(b)(6) witnesses shortly, and can confirm that we will be putting up at least Phil Dunham and Damien Schmitz the week of August 7 in Chicago. With respect to the other 30(b)(1) notices, we are tracking down witness availability. I will note that Kyle Oppenheim has left Groupon.

We will investigate the documents mentioned in Laurie's email. Based on the URL in the document she forwarded, we expect that the referenced document will be in the forthcoming production of GitHub wiki documents collected along with the source code.

With respect to Splunk, Grapher, and Basecamp, we are not yet aware of any non-redundant documents in those repositories.

We are available to confer after 2pm Pacific/5pm Eastern today, or tomorrow before 1:30 Eastern or after 3:30 pm Eastern.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, July 27, 2017 10:59 AM  
**To:** Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com);

[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
<[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We have not gotten a response to our last three emails. Could you please let us know when you are available to meet and confer today? There are several outstanding discovery issues and we need to understand whether Groupon has made any progress in resolving them.

Best,  
Karim

**Karim Z. Oussayef**

**DESMARAIS LLP**

230 Park Avenue

New York, NY 10169

T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Laurie Stempler

**Sent:** Wednesday, July 26, 2017 11:48 AM

**To:** [smehta@fenwick.com](mailto:smehta@fenwick.com); [phaack@fenwick.com](mailto:phaack@fenwick.com); [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
([Groupon IBM Service@fenwick.com](mailto:Groupon_IBM_Service@fenwick.com))

**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))

**Subject:** IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

I write regarding several outstanding discovery-related disputes.

First, we have not yet received Groupon's supplemental interrogatory responses, despite your previous commitment to serve them last Friday, nor have we received a response to my reminder email from this past Monday. Please either provide the supplemental responses or provide your availability to meet and confer tomorrow after 3 PM ET.

We have also not received confirmation that Groupon will produce the native versions of the Weekly Business Reviews and NA Email and CRM documents. Although our respective support teams have worked together to try to sort out the technical issues, we are still unable to view the documents as produced. As I mentioned on Monday (after failed attempts to sort out the technical issue), the most efficient way forward would be for Groupon to produce the native files with a DAT overlay. Please confirm that you will do so or confirm your availability to meet and confer.

Thank you for serving your amended initial disclosures. Please confirm that you have completed your collection and production of documents from the Groupon employees that you identified in those disclosures.

Please provide an update on your efforts to identify 30(b)(6) witnesses and their availability for deposition, along with the availability of the 30(b)(1) witnesses that we noticed.

Documents in Groupon's production reference additional relevant documentation that appears to not have been produced. For example, the attached Operational Readiness Review document states that the users-service is

documented at a github repository. (See the highlighted link at the top of p.3 of the attached document.) Please confirm that you will produce this documentation – and all other relevant github documentation, including that requested by Robert Harrits in his July 21<sup>st</sup> email – by the end of next week.

Finally, please provide an update on when we can expect production of all relevant documents from Splunk, Grapher, and Basecamp, as requested in Robert's email.

We are available to meet and confer on the above issues tomorrow any time after 3 PM ET. Please confirm your availability and we will circulate a dial-in number.

Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3423  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

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# **EXHIBIT 15**



## Michael Matulewicz-Crowley

---

**From:** Robert Harrits  
**Sent:** Monday, August 7, 2017 5:19 PM  
**To:** Phillip Haack; Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service  
**Cc:** bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com); Sapna Mehta; Groupon\_IBM\_Service@Fenwick.com  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

I write to follow up on the status of Groupon's production of the GitHub wiki documents. During a meet and confer on July 27, 2017, you stated that Groupon would endeavor to produce the GitHub documents before the week of August 7. Can you please let us know when Groupon expects to produce the GitHub documents, especially considering Groupon's 30(b)(6) witness on technical issues is expected to testify on August 10, 2017.

Also, please let us know who will be testifying to topics 8-13 from IBM's Second 30(b)(6) Notice and topics 3-7 and 10 from IBM's Third 30(b)(6) Notice and the date and location of the deposition so we can make travel arrangements. In addition, please let us know the dates and the location of the 30(b)(1) witnesses that IBM noticed.

Thank you,  
Robert

---

**From:** Robert Harrits  
**Sent:** Saturday, August 5, 2017 1:32 PM  
**To:** Phillip Haack; Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service  
**Cc:** bpalapura@potteranderson.com; dmoore@potteranderson.com; sobyrne@potteranderson.com; 'Day, John G.' (JDay@ashbygeddes.com); Sapna Mehta; Groupon\_IBM\_Service@Fenwick.com  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

I write to summarize yesterday's meet and confer. Please let me know if you disagree with anything below:

### Regarding IBM's Second 30(b)(6) Notice

- Topic 6 – Groupon agreed to provide a witness to testify on all agreements except those that you allege to be privileged, and on the existence of any agreements that you allege to be privileged.
- Topic 7 – Groupon agreed to provide a witness to testify on the functionality and configuration of servers that deliver content to Groupon's users.
- Topic 9 – Groupon agreed to provide a witness to testify on the total number of revenue-generating transaction events made using the Accused Instrumentalities.
- Topic 10 – Groupon agreed to provide a witness to testify on the total number of revenue-generating transaction events made by users whose accounts were linked to Facebook and/or Google login credentials.
- Topic 11 – Groupon agreed to provide a witness to testify generally as to what transaction events Groupon tracks and the number of transaction events for a particular year. Groupon refused to provide a witness to testify about the specific raw data on a month-by-month basis.

- Topic 30 – Groupon agreed to provide a witness to testify about all non-privileged information related to this topic.
- Topic 32 – Groupon refused to provide a witness on Topic 32 at this time.

Regarding IBM's Third 30(b)(6) Notice

- Topic 3 – Groupon agreed that its "marketing" witness would be prepared to testify on this topic.
- Topic 7 - Groupon agreed to provide a witness to testify generally on what usage data Groupon tracks and the number of transaction events for a particular year. Groupon refused to provide a witness to testify about the specific raw data on a month by month basis.
- Topic 9 – Groupon agreed to provide a witness to testify on “any patent license that Groupon has identified or produced in this matter, any patent license which relates to technology claimed by the patents-in-suit, or any patent license which relates to the allegedly infringing aspects of the accused Groupon instrumentalities.” Groupon refused to provide a witness to testify on all patent licenses that cover Groupon's website.
- Topic 10 – Groupon agreed to provide a witness to testify on revenue-generating transaction events, Groupon's mobile applications, and its website.

Please let us know as soon as possible when Groupon will make a witness available on the topics that have not yet been designated.

Regards,  
Robert

---

**From:** Robert Harrits

**Sent:** Friday, August 4, 2017 1:40 PM

**To:** Phillip Haack; Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service

**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)); Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We can meet at 2 pm pacific/ 5 pm eastern. We can use the following dial in:

Dial-in: 866.835.1224

Conference Code 4682626058

Thanks,  
Robert

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]

**Sent:** Friday, August 4, 2017 12:59 PM

**To:** Karim Oussayef; Jessica Benzler; Laurie Stempler; IBM Groupon Service

**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)); Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)

**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

We are available at 12:15pm Pacific/3:15pm Eastern today, or after 2pm Pacific. Groupon will be designating Mr. Schmitz on topics 4, 5, 6 and 9 and Mr. Dunham on topic 2 from IBM's first notice. The remaining topic, 6, regarding customer feedback, will be handled by Groupon's marketing witness.

Best,

Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, August 03, 2017 4:45 PM  
**To:** Jessica Benzler <[jbenzler@fenwick.com](mailto:jbenzler@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>  
**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>; Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We accept your invitation to meet and confer. Please let us know when you are available tomorrow to discuss Groupon's responses to at least topics 6, 7, 9, 10, 11, 30, and 32 from IBM's Second Notice and topics 3, 7, 9, and 10 from IBM's Third Notice.

Please let us know what topics Damien Schmitz and Phillip Dunham will address from IBM's First Deposition Notice to Groupon. You previously agreed that your "substantive" witnesses would testify about the topics Ms. Baldwin was unable to address at her deposition (nos. 2, 4, 5, 6, 7, and 9).

Thanks,  
Karim

---

**From:** Jessica Benzler [<mailto:jbenzler@fenwick.com>]  
**Sent:** Wednesday, August 2, 2017 8:13 PM  
**To:** Karim Oussayef; Laurie Stempler; IBM Groupon Service  
**Cc:** [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)); Phillip Haack; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Mimecast Attachment Protection has created safe copies of your attachments.

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Counsel,

Attached please find Groupon's Responses and Objections to IBM's Second and Third Notices of Deposition. Pursuant to Rule 30(b)(6), Groupon designates the following witnesses on the topics listed:

Damien Schmitz (Deposition on August 9, 2017):

- Second Notice Topics: 25, 26, 30, 31
- Third Notice Topics: 1, 2, 8, 9,

Phillip Dunham (Deposition on August 10, 2017):

- Second Notice Topics: 1-7, 14-24, 27-29

Both of these depositions will take place at Marshall, Gerstein & Borun LLP:  
233 South Wacker Drive

6300 Willis Tower  
Chicago, IL 60606-6357

Regards,  
Jessica



**JESSICA BENZLER**  
Fenwick & West LLP  
Associate, Litigation Group  
☎ (650) 335-7279  
🏠 (415) 281-1350  
✉ [jbenzler@fenwick.com](mailto:jbenzler@fenwick.com)

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Wednesday, August 02, 2017 10:52 AM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We accept those dates. Could you please confirm the topics for which each witness is designated?

Thanks,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Wednesday, August 2, 2017 12:49 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Damien Schmitz for is available on the 9th and Phil Dunham on the 10<sup>th</sup>.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Wednesday, August 02, 2017 6:38 AM

**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

We have not heard back from you. Once again, we request that you confirm the availability of Groupon's witnesses so that our team can prepare and make travel plans. Please let us know today.

Regards,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Monday, July 31, 2017 8:35 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon agrees to produce relevant responsive documents in the witnesses' possession to the extent they have not yet been produced. I can confirm we are putting up Phil Dunham and Damien Schmitz next week in Chicago and expect to have final confirmation of dates tomorrow.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Monday, July 31, 2017 7:02 AM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Could you please confirm the availability of Groupon's witnesses to sit for deposition next week so that our team can prepare and make travel plans?

Also, could you please answer my question below? We want to understand whether we have a disagreement about Groupon's obligations to search for and produce documents from relevant witnesses.

Thanks,  
Karim

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 27, 2017 9:45 PM  
**To:** Phillip Haack; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

You state: "I represented that we had or would check with witnesses about the location of relevant responsive non-duplicative documents and, to the extent those documents had not been collected, collect and produce them. I explicitly rejected IBM's suggested that Groupon is obligated to collect personal or non-central documents for every witness that IBM has noticed a deposition for unless those documents would reveal unique information material to the case." Could you please clarify what you are agreeing to do and what you are not agreeing to do? Are you agreeing to produce documents that your witnesses identify but not if they are "personal" or "non-central"?

We are in agreement about the deadlines for final contentions. We will draft a proposed stipulation.

I will check with my team about the native documents and get back to you.

Best,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Thursday, July 27, 2017 9:20 PM  
**To:** Karim Oussayef <[KOussayef@desmaraisllp.com](mailto:KOussayef@desmaraisllp.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

I wanted to clarify our position on additional documents from the people IBM has noticed. I represented that we had or would check with witnesses about the location of relevant responsive non-duplicative documents and, to the extent those documents had not been collected, collect and produce them. I explicitly rejected IBM's suggested that Groupon is obligated to collect personal or non-central documents for every witness that IBM has noticed a deposition for unless those documents would reveal unique information material to the case. Groupon maintains that such a collection is not proportional to the needs of the case.

With respect to IBM's request to move out the date for its final infringement contentions, Groupon will agree if it has an equal extension of time for its invalidity contentions. Your current proposal would move IBM's deadline out four weeks and Groupon's three.

Finally, the additional documents you mentioned in your email were produced in redacted form due to privilege issues, so we cannot produce the native files. The original TIFF production documents appear to us to be fully legible. If your team is having trouble viewing them, we are willing to explore other formats, such as the color TIFF or PDF documents proposed previously. Please let me know if you'd like to discuss.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, July 27, 2017 4:05 PM  
**To:** Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Thanks for conferring with us about outstanding discovery issues. We agreed on the following:

1. Groupon will offer witnesses to testify about IBM's technical and financial 30(b)(6) topics during the week of August 7th.
2. Groupon will offer a witness to testify about IBM's marketing 30(b)(6) topics during the week of August 14th.
3. We tentatively scheduled Damien Shmitz to testify on financial topics on August 10 and Phil Dunham to testify on technical topics on August 11, both in Chicago. Groupon expects to offer the marketing witness in Seattle.
4. Groupon will diligently search for and produce documents from each witness before the date of their deposition, to the extent it has not already.
5. Groupon will diligently search for and produce relevant non-duplicative documents from Splunk, Grapher, and Basecamp, before the week of August 7.
6. Groupon is diligently working to produce wiki documents from GitHub and will endeavor to produce them before the week of August 7.
7. Groupon will serve a supplemental response to Interrogatory No. 7 today and expects to serve a supplemental response to Interrogatory No. 10 tomorrow.
8. The parties will confer about the necessity of taking the depositions of certain witness, including Soo, Sighn, and Oppenheim.

9. In light of the depositions scheduled in August, you will check with your client about agreeing to extend the deadline for IBM's Final Infringement Contention until August 25. We are amenable to extending the deadline for Groupon's Final Invalidity Contentions until September 18 as part of that agreement.

Finally, the following documents did not make it into Groupon's production of native documents. Please produce them in native form:

GROUP028695  
GROUP028702  
GROUP029648

Please let me know if you disagree with any aspects of my summary.

Thanks,  
Karim

**Karim Z. Oussayef**

**DESMARAIS LLP**  
230 Park Avenue  
New York, NY 10169  
T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Karim Oussayef  
**Sent:** Thursday, July 27, 2017 4:52 PM  
**To:** Phillip Haack; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Phil,

Thanks for your response. Let's confer at 5:30 ET.

Conference number: (866) 835-1224  
Conference code: 511 566 5982

Best,  
Karim

---

**From:** Phillip Haack [<mailto:phaack@fenwick.com>]  
**Sent:** Thursday, July 27, 2017 4:40 PM  
**To:** Karim Oussayef; Laurie Stempler; Sapna Mehta; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Karim,

Groupon made a production of the requested native files yesterday.



We will provide dates for Groupon's 30(b)(6) witnesses shortly, and can confirm that we will be putting up at least Phil Dunham and Damien Schmitz the week of August 7 in Chicago. With respect to the other 30(b)(1) notices, we are tracking down witness availability. I will note that Kyle Oppenheim has left Groupon.

We will investigate the documents mentioned in Laurie's email. Based on the URL in the document she forwarded, we expect that the referenced document will be in the forthcoming production of GitHub wiki documents collected along with the source code.

With respect to Splunk, Grapher, and Basecamp, we are not yet aware of any non-redundant documents in those repositories.

We are available to confer after 2pm Pacific/5pm Eastern today, or tomorrow before 1:30 Eastern or after 3:30 pm Eastern.

Best,  
Phil

---

**From:** Karim Oussayef [<mailto:KOussayef@desmaraisllp.com>]  
**Sent:** Thursday, July 27, 2017 10:59 AM  
**To:** Laurie Stempler <[LStempler@desmaraisllp.com](mailto:LStempler@desmaraisllp.com)>; Sapna Mehta <[smehta@fenwick.com](mailto:smehta@fenwick.com)>; Phillip Haack <[phaack@fenwick.com](mailto:phaack@fenwick.com)>; [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com)  
**Cc:** IBM Groupon Service <[IBMGrouponService@desmaraisllp.com](mailto:IBMGrouponService@desmaraisllp.com)>; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com); [sobyrne@potteranderson.com](mailto:sobyrne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)) <[JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com)>  
**Subject:** RE: IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

We have not gotten a response to our last three emails. Could you please let us know when you are available to meet and confer today? There are several outstanding discovery issues and we need to understand whether Groupon has made any progress in resolving them.

Best,  
Karim

**Karim Z. Oussayef**

**DESMARAIS LLP**  
230 Park Avenue  
New York, NY 10169  
T: (212) 351-3427 | F: (212) 351-3401

---

**From:** Laurie Stempler  
**Sent:** Wednesday, July 26, 2017 11:48 AM  
**To:** [smehta@fenwick.com](mailto:smehta@fenwick.com); [phaack@fenwick.com](mailto:phaack@fenwick.com); [Groupon IBM Service@Fenwick.com](mailto:Groupon_IBM_Service@Fenwick.com) ([Groupon IBM Service@fenwick.com](mailto:Groupon_IBM_Service@fenwick.com))  
**Cc:** IBM Groupon Service; [bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com); [dmoore@potteranderson.com](mailto:dmoore@potteranderson.com);

[sobyne@potteranderson.com](mailto:sobyne@potteranderson.com); 'Day, John G.' ([JDay@ashbygeddes.com](mailto:JDay@ashbygeddes.com))

**Subject:** IBM v. Groupon, C.A. No. 16-cv-122 (D. Del.)

Counsel,

I write regarding several outstanding discovery-related disputes.

First, we have not yet received Groupon's supplemental interrogatory responses, despite your previous commitment to serve them last Friday, nor have we received a response to my reminder email from this past Monday. Please either provide the supplemental responses or provide your availability to meet and confer tomorrow after 3 PM ET.

We have also not received confirmation that Groupon will produce the native versions of the Weekly Business Reviews and NA Email and CRM documents. Although our respective support teams have worked together to try to sort out the technical issues, we are still unable to view the documents as produced. As I mentioned on Monday (after failed attempts to sort out the technical issue), the most efficient way forward would be for Groupon to produce the native files with a DAT overlay. Please confirm that you will do so or confirm your availability to meet and confer.

Thank you for serving your amended initial disclosures. Please confirm that you have completed your collection and production of documents from the Groupon employees that you identified in those disclosures.

Please provide an update on your efforts to identify 30(b)(6) witnesses and their availability for deposition, along with the availability of the 30(b)(1) witnesses that we noticed.

Documents in Groupon's production reference additional relevant documentation that appears to not have been produced. For example, the attached Operational Readiness Review document states that the users-service is documented at a github repository. (See the highlighted link at the top of p.3 of the attached document.) Please confirm that you will produce this documentation – and all other relevant github documentation, including that requested by Robert Harrits in his July 21<sup>st</sup> email – by the end of next week.

Finally, please provide an update on when we can expect production of all relevant documents from Splunk, Grapher, and Basecamp, as requested in Robert's email.

We are available to meet and confer on the above issues tomorrow any time after 3 PM ET. Please confirm your availability and we will circulate a dial-in number.

Laurie

Laurie Stempler  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-3423  
[lstempler@desmaraisllp.com](mailto:lstempler@desmaraisllp.com)

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# **EXHIBIT 16**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-122-LPS-CJB
	)	
GROUPON, INC.,	)	
	)	
Defendant.	)	

**INITIAL DISCLOSURES PURSUANT TO  
SECTION 3 OF THE COURT'S DEFAULT STANDARD FOR DISCOVERY**

Defendant Groupon, Inc. ("Groupon"), by and through undersigned counsel, and pursuant to this District's Default Standard for Discovery, hereby provides the following disclosures pursuant to paragraph 3 of the Default Standard for Discovery. Groupon served its disclosures pursuant to Rule 26(a)(1) on October 12, 2016 and those disclosures are incorporated by reference herein.

These disclosures are based on information reasonably available to Groupon at this time. In addition, these disclosures are made with the understanding that Groupon cannot anticipate all of the positions that it or IBM may take in this case. Groupon's investigation is ongoing, and it reserves the right to supplement or amend these disclosures as discovery and investigation proceed.

Groupon makes these disclosures without waiving in any manner: (1) the right to object on any basis permitted by law to the use of any information contained herein for any purpose in any subsequent proceeding in this or any other action; and (2) the right to object on any basis permitted by law to any discovery request or proceeding involving or related to the subject matter of these disclosures.

**I. 3(A) —Groupon CUSTODIANS LIKELY TO HAVE DISCOVERABLE INFORMATION**

Pursuant to Section 3.a of the Default Standard for Discovery, Including Discovery of Electronically Stored Information, Groupon identifies the individuals listed below as the custodians most likely to have discoverable information in their possession, custody, or control. Given the status of discovery, Groupon is unable to rank the relative importance of these custodians. Groupon reserves the right to supplement this list at a later date.

Groupon does not represent that these custodians have relevant documents in their possession, custody, or control and does not waive its right to object to the production of any document or tangible thing in the possession of any custodian on the basis of any applicable privilege, the work product doctrine, relevance, or any other valid objection.

<b>Name and Contact Information, if Known</b>	<b>Connection with the Case</b>	<b>Brief Statement of Substance of Information Known</b>
Jim Breen c/o Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041	Senior Software Developer, Groupon, Inc.	Design, development and operation of technology in the accused Groupon instrumentalities, including their history and development; and other matters within his personal knowledge.
Phillip Dunham c/o Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041	Senior Manager, Groupon, Inc.	Design, development and operation of technology in the accused Groupon instrumentalities, including their history and development; and other matters within his personal knowledge.

Name and Contact Information, if Known	Connection with the Case	Brief Statement of Substance of Information Known
Michael Mulvihill  c/o Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041	Senior Software Developer, Groupon, Inc.	Design, development and operation of technology in the accused Groupon instrumentalities, including their history and development; and other matters within his personal knowledge.
Damien Schmitz  c/o Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041	Director, Global FP&A, Groupon, Inc.	Sales and financial information relating to the accused Groupon instrumentalities.
Vikram Singh  c/o Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041	Senior Director, Consumer Product, Groupon, Inc.	Design, development and operation of technology in the accused Groupon instrumentalities, including their history and development; and other matters within his personal knowledge.
Joanne Soo  c/o Fenwick & West LLP Silicon Valley Center 801 California Street Mountain View, CA 94041	Product Manager, Global Consumer Products, Groupon, Inc.	Design, development and operation of technology in the accused Groupon instrumentalities, including their history and development; and other matters within her personal knowledge.

Additional custodians who may have discoverable information may be identified through the course of discovery. Groupon expressly reserves the right to supplement and/or amend this disclosure based on further investigation, analysis, and discovery.

## II. 3(B)—NON-CUSTODIAL DATA SOURCES

Pursuant to Section 3.b of the Default Standard for Discovery, Including Discovery of Electronically Stored Information, Groupon identifies its source code repositories, Google Drive,

internal development wikis at wiki.groupdev.com and GitHub Enterprise, its databases storing sales information, JIRA, and Pivotal Tracker as the noncustodial data sources that are most likely to contain non-duplicative discoverable information. Groupon has attempted to rank these non-custodial sources from mostly likely to possess discoverable information to least likely, but given the status of discovery, Groupon is unable to rank the relative importance of these non-custodial sources precisely.

Groupon does not represent that these data sources necessarily contain relevant information, and does not waive its right to object to the production of any document or data residing in such data sources on the basis of any privilege, the work product doctrine, relevance, confidentiality or any other valid objection.

Additional data sources may be identified through the course of discovery. Groupon expressly reserves the right to supplement and/or amend this disclosure based on further investigation, analysis, and discovery.

### **III. 3(C)(I)—ISSUES RELATED TO ESI**

Pursuant to Section 3.c.(i) of the Default Standard for Discovery, Including Discovery of Electronically Stored Information, Groupon identifies the following categories of ESI as not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i): information listed in Schedule A of the Default Standard for Discovery, Including Discovery of Electronically Stored Information; and electronic information retained primarily for back-up or disaster recovery purposes.

### **IV. 3(C)(II)—ISSUES RELATED TO THIRD-PARTY DISCOVERY UNDER FED. R. CIV. P. 45 AND OTHERWISE, INCLUDING THE TIMING AND SEQUENCING OF SUCH DISCOVERY**

Pursuant to Section 3.c.(ii) of the Default Standard for Discovery, Including Discovery of Electronically Stored Information, Groupon presently anticipates that third party discovery may



be necessary from the following parties: IBM's licensees; the inventors of the patents-in-suit; the firms, attorneys, and other individuals involved in the prosecution of the patents-in-suit; persons with knowledge regarding invalidating prior art references, devices or systems; IBM's former employees with relevant knowledge and persons with knowledge regarding IBM or its predecessors' previous efforts to license, market, or sell the alleged inventions.

Given that discovery in this case is just beginning, IBM has not yet provided its infringement contentions, and the ongoing nature of Groupon's investigation, Groupon is not currently aware of any issues that need to be addressed concerning the timing and sequencing of third-party discovery. Groupon will work with IBM to coordinate the timing and sequencing of such discovery, if required.

Additional third parties may be identified through the course of discovery. Groupon expressly reserves the right to supplement and/or amend this disclosure based on further investigation, analysis, and discovery.

**V. 3(C)(III)—ISSUES RELATED TO PRODUCTION SUBJECT TO FOREIGN LAWS AND/OR PRIVACY PROTECTIONS**

Pursuant to Section 3.c.(iii) of the Default Standard for Discovery, Including Discovery of Electronically Stored Information, Groupon is currently unaware of any specific information that may need to be produced from outside of the United States and subject to foreign laws. Groupon notes, however, that it is a global company with offices around the world.

Groupon is currently unaware of any discoverable information subject to privacy protections. Groupon notes, however, that some information in Groupon's possession, custody or control may be subject to confidentiality agreements between Groupon and third parties. Groupon does not intend to produce any personal information about its customers. Additional issues with respect to privacy protections or the application of foreign laws may be identified through the

course of discovery. Groupon expressly reserves the right to supplement and/or amend this disclosure based on further investigation, analysis, and discovery.

ASHBY & GEDDES

*Of Counsel:*

*/s/ Andrew C. Mayo*

J. David Hadden  
Saina S. Shamilov  
Phillip J. Haack  
Adam M. Lewin  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
(650) 988-8500

---

John G. Day (#2403)  
Andrew C. Mayo (#5207)  
500 Delaware Avenue, 8<sup>th</sup> Floor  
P.O. Box 1150  
Wilmington, DE 19899  
(302) 654-1888  
jday@ashby-geddes.com  
amayo@ashby-geddes.com

*Attorneys for Defendant Groupon, Inc.*

Dated: November 2, 2016

# **EXHIBIT 17**

## Michael Matulewicz-Crowley

---

**From:** Sandra Pomeroy <spomeroy@fenwick.com>  
**Sent:** Monday, August 7, 2017 7:41 PM  
**To:** Karim Oussayef; Jon Hohenthanner; Palapura, Bindu A.  
(bpalapura@potteranderson.com)  
**Cc:** IBM Groupon Service; Phillip Haack; Sapna Mehta; Sandra Pomeroy  
**Subject:** FW: IBM v Groupon (D. Del), Case No. 16-cv-122

Counsel,

Please find below instructions to access Groupon's production of documents - volumes GRP-DEL006 and GRP-DEL007. The password for the zip files will follow in a separate email.

Sincerely,



**SANDRA POMEROY**

Fenwick & West LLP  
Senior Paralegal, Litigation Group

☎ (650) 335-7861  
☎ (650) 938-5200  
✉ spomeroy@fenwick.com

### FTP Information:

Host: securefile.fenwick.com  
Port: 22  
Server Type: SFTP  
Log on type: normal  
Username: groupon\_ibm\_oppcounsel  
Password: 7hYfr/TA+U(ac{:/

### FTP Instructions:

You will need to download and install Filezilla, or use another client that fully supports secure FTP (SFTP). Most web browsers like Internet Explorer or Firefox will not support SFTP natively. We recommend Filezilla because it's small and works well.

You can download Filezilla here: [https://filezilla-project.org/download.php?show\\_all=1](https://filezilla-project.org/download.php?show_all=1)

Once you have it downloaded, install then run the program.

Then launch the program, and just fill in the information in the top bar (copy and paste works well to avoid mistakes), make sure the port is 22, then hit Quickconnect.



Once you are connected, to upload files, drag files from the desktop to the right hand pane. To download files, drag the files from the right hand pane down to the desktop.

**If uploading** - We highly recommend that when you upload files, you combine everything you want to upload into a single archive with a simple name (such as upload.zip) to prevent issues with uploading, especially since our FTP server is restricted to Windows naming conventions, thank you.

-----  
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# **EXHIBIT 18**

## Michael Matulewicz-Crowley

---

**From:** Sandra Pomeroy <spomeroy@fenwick.com>  
**Sent:** Tuesday, August 8, 2017 6:27 PM  
**To:** Karim Oussayef; Jon Hohenthanner; Palapura, Bindu A.  
(bpalapura@potteranderson.com)  
**Cc:** IBM Groupon Service; Phillip Haack; Sapna Mehta; Sandra Pomeroy  
**Subject:** IBM v Groupon (D. Del), Case No. 16-cv-122

Counsel,

Please find below instructions to access Groupon's production of documents - volume GRP-DEL008. The password for the zip files will follow in a separate email.

Sincerely,



**SANDRA POMEROY**

Fenwick & West LLP  
Senior Paralegal, Litigation Group

☎ (650) 335-7861  
📠 (650) 938-5200  
✉ spomeroy@fenwick.com

### FTP Information:

Host: securefile.fenwick.com  
Port: 22  
Server Type: SFTP  
Log on type: normal  
Username: groupon\_ibm\_oppcounsel  
Password: 7hYfr/TA+U(ac{:/

### FTP Instructions:

You will need to download and install Filezilla, or use another client that fully supports secure FTP (SFTP). Most web browsers like Internet Explorer or Firefox will not support SFTP natively. We recommend Filezilla because it's small and works well.

You can download Filezilla here: [https://filezilla-project.org/download.php?show\\_all=1](https://filezilla-project.org/download.php?show_all=1)

Once you have it downloaded, install then run the program.

Then launch the program, and just fill in the information in the top bar (copy and paste works well to avoid mistakes), make sure the port is 22, then hit Quickconnect.



Once you are connected, to upload files, drag files from the desktop to the right hand pane. To download files, drag the files from the right hand pane down to the desktop.

**If uploading** - We highly recommend that when you upload files, you combine everything you want to upload into a single archive with a simple name (such as upload.zip) to prevent issues with uploading, especially since our FTP server is restricted to Windows naming conventions, thank you.

-----  
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# **EXHIBIT 19**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT 20**

**THIS EXHIBIT HAS BEEN  
REDACTED IN ITS ENTIRETY**

# **EXHIBIT 21**

08:45:05 1

IN THE UNITED STATES DISTRICT COURT

2

IN AND FOR THE DISTRICT OF DELAWARE

3

- - -

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

: CIVIL ACTION

:

5

Plaintiff,

:

v

:

6

:

GROUPON, INC.,

:

7

: NO. 16-122-LPS

Defendant.

8

- - -

9

Wilmington, Delaware

Monday, June 5, 2017

10

*Claim Construction and Motion Hearing*

11

- - -

12

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

13

APPEARANCES:

- - -

14

POTTER ANDERSON & CORROON, LLP

15

BY: BINDU A. PALAPURA, ESQ.

16

and

17

DESMARAIS, LLP

18

BY: JOHN DESMARAIS, ESQ.,

KARIM OUSSAYEF, ESQ.,

19

LAURIE STEPLER, ESQ.,

ROBERT C. HARRITS, ESQ., and

03:00:32

20

MICHAEL MATULEWICZ-CROWLEY, ESQ.

(New York, New York)

21

Counsel for Plaintiff

22

ASHBY & GEDDES, P.A.

23

BY: JOHN G. DAY, ESQ.

24

and

25

Brian P. Gaffigan

Registered Merit Reporter

1 APPEARANCES: (Continued)

3 FENWICK & WEST, LLP  
BY: J. DAVID HADDEN, ESQ., and  
4 PHILLIP HAACK, ESQ.  
(San Francisco, California)

5 Counsel for Defendants

6 - oOo -

9 P R O C E E D I N G S

10 (REPORTER'S NOTE: The following claim  
11 construction and motion hearing was held in open court,  
12 beginning at 9:00 a.m.)

13 THE COURT: Good morning.  
14 (The attorneys respond, "Good Morning, Your  
15 Honor.)

16 THE COURT: I'll have you put your appearances  
17 on the record for me, please. Good morning.

18 MS. PALAPURA: Good morning, Your Honor. Bindu  
19 Palapura from Potter Anderson & Corroon on behalf of IBM.  
20 With me today from Desmarais, LLP is John Desmarais.

21 MR. DESMARAIS: Good morning.

22 MS. PALAPURA: Karim Oussayef.

23 MR. OUSSAYEF: Good morning, Your Honor.

24 MS. PALAPURA: Laurie Stempler.

25 MS. STEPLER: Good morning.

3

1 MS. PALAPURA: Michael Matulewicz-Crowley.

2 MR. MATULEWICZ-CROWLEY: Good morning.

3 MS. PALAPURA: And Roberts Harrits.

4 MR. HARRITS: Good morning, Your Honor.

5 MR. DAY: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. DAY: John Day from Ashby & Geddes, Delaware  
8 counsel for Groupon. With me from Fenwick & West, David  
9 Hadden.

10 MR. HADDEN: Good morning, Your Honor.

11 MR. DAY: And Phil Haack.

12 MR. HAACK: Good morning, Your Honor.

13 MR. DAY: And from Groupon, Lauren Schwartz.

14 MS. SCHWARTZ: Good morning.

15 THE COURT: Good morning. Welcome. So we're  
16 here for argument on a motion as well as the *Markman*  
17 hearing. Have you all conferred on how you would like to  
18 use your time this morning?

19 MR. OUSSAYEF: Yes, Your Honor. We conferred  
20 with the other side. We decided that we know the order of  
21 the terms that we would like to argue for the *Markman*  
22 hearing, but we would like to hear whether Your Honor first  
23 would hear either the motion for judgment of pleadings or  
24 the claim construction issues first.

25 THE COURT: So you have no view on that.

1 MR. OUSSAYEF: If we were to proceed, I think  
2 it makes sense to start with the motion for judgment on the  
3 pleadings.

4 THE COURT: And what is your view?

5 MR. HADDEN: That's fine with me, Your Honor.

6 THE COURT: Okay. So let's do the 101 first and  
7 then we'll do the claim construction.

8 MR. OUSSAYEF: Yes, Your Honor. It is  
9 defendant's motion. We'll have them go first.

10 THE COURT: Right. We'll hear from defendants  
11 first. Thank you.

12 MR. HADDEN: Thank you, Your Honor.

13 (Elmo settings adjusted.)

14 MR. HADDEN: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. HADDEN: So as you know, this motion relates  
17 to the two Prodigy patents which share, largely share the  
18 same specification.

19 And as the Court found in the prior ruling in  
20 the *Priceline* motion, these claims fail under Step One of  
21 the *Alice* steps as the Court found the concepts, the patents  
22 relate to the general idea of locally storing information  
23 in using that to create a partition display. And,

24 As Judge Burke found in the prior motion, those  
25 concepts are abstract and devoid of concrete and tangent

5

1 application. And that people have been storing information  
2 locally and using it even before computers, and that this is  
3 really not distinguishable from cases like *Content Extraction*  
4 or similar concepts have been found to be abstract.

5 Now, in response, in opposition to the current  
6 motion, IBM has argued that the Federal Circuit decision in  
7 *Enfish* changed the law. And they've argued that after  
8 *Enfish*, any claim that aspires and supports to improve  
9 computers or computer networking is somehow immune under

10 101 or immune to 101 scrutiny. And,  
11 That argument has been rejected repeatedly by  
12 courts both in this District and by the Federal Circuit,  
13 probably most clearly in Judge Andrews decision in *Visual*  
14 *Memory v Nvidia*. In that case, the plaintiff made exactly  
15 the same argument. It said that after *Enfish*, because the  
16 claims in the digital memory patent related to a storage  
17 system, multi-tier cache, they were aimed at an improvement  
18 to computer technology and therefore were immune from 101  
19 scrutiny. And,

20 Judge Andrews correctly rejected that argument  
21 and, as he explained, the real issue in *Enfish* is whether  
22 the District Court had been too general and oversimplified  
23 in the Step One analysis but not that somehow that case  
24 immunizes from 101 scrutiny patents that aspire related to  
25 the use. And, again, Judge Andrews reemphasized the real

1 test, which is not whether it somehow touches on computers  
2 but whether the claims provide a specific concrete solution.

3 And in Your Honor's opinion in *IV v Symantec*,  
4 there is a similar argument made. And, again, Your Honor  
5 reached the same result. In that case, the claims were to  
6 this purportedly improved method for mirroring data to a  
7 remote location, and when it was stable against power  
8 outages, et cetera, but there was no concrete solution. The  
9 claims did not include the required details for the specific  
10 solution to avoid 101.

11 There has to be a concrete specific solution.  
12 That is the test. And,

13 Again, as in this case, IBM is sort of pointing  
14 to the specification and arguing that somehow these Prodigy  
15 patents overcame problems with dumb terminals or prior  
16 networking systems, but that is not in the claims.

17 The focus on this case has to be the issue, Your  
18 Honor noted in *IV v Symantec*, on the claims as written and  
19 whether they actually specified a specific solution. And  
20 here they don't. And,

21 Again, just to make clear, there has been a slew  
22 of Federal Circuit cases following *Enfish* finding patents  
23 that relate somehow or aspire to improve computers invalid  
24 under 101 including the *Tranxition* case, *Appistry v Amazon*  
25 which are related to distributed computing. *Tranxition* was

7

1 about migrating computer settings and the *IV I v Symantec*  
2 case of a virus scanning in a computer network. All of  
3 those purported to improve computer technology or computer  
4 networks. All were found invalid.

5 IBM's next argument under Step One is that the  
6 claims are not invalid under Step One because the PTAB  
7 denied a CBM review of one of the patents.

8 I mean, the first point is the PTAB didn't  
9 even look at the '967 patent because IBM disclaimed the  
10 advertising claims in that patent to take it out of CBM  
11 purview.

12 But then if we look at the PTAB's analysis on  
13 the '849 patent, it is directly contrary to what this Court  
14 previously found. So the PTAB agreed that the claims were  
15 directed at the abstract idea of generating a partition  
16 screen display from information stored at the user's  
17 computer. The same idea that Judge Burke and Your Honor  
18 found was abstract in the prior *Priceline* decision. And,  
19 Beyond that, the PTAB went on in their decision  
20 and agreed with the petitioner that the claims themselves  
21 recite only generalized steps. He did not go into further  
22 detail as to how those steps were accomplished.

23 Now, it seems like it should be game over at that  
24 point; right? I mean if the claim does not have details  
25 about how the ideas are to be accomplished and just describes

1 generalized steps, under *Affinity Labs v Amazon*, that is kind  
2 of the hallmark of the claim that is invalid under 101.

3 But, instead, the PTAB applied this test and I  
4 frankly have never seen before, which is they said if we  
5 take out the words and references to computers in the claim,  
6 would that change the meaning to someone in 1989? And, if  
7 so, then somehow the claim is not directed to an abstract idea.

8 That is not a test I have ever seen in a Federal  
9 Circuit case or in any District Court case. And with all  
10 due respect to the PTAB, it strikes me as kind of wacky.

11 So I don't think there is any dispute at this  
12 point that these claims fail under Step One.

13 Now, if we go to Step Two, what is the inventive  
14 concept that provides the specific novel solution?

15 Well, there is none. IBM hung its hat on "data  
16 object" in the *Priceline* motion, but the Court has now  
17 construed that "object" as "a data structure." And the  
18 cases are clear that a data structure is a generic concept.  
19 There is nothing inventive about using data structures. In  
20 fact, every computer program uses data structures. Right?  
21 Computers understand structured data. They're data structures.

22 And it is important -- right? -- to distinguish  
23 *Enfish*. *Enfish* survived because it didn't just claim using  
24 a data structure, it claimed a very specific type of data  
25 structure: this self-referential cable, and there was a

9

1 four step algorithm for how to use it in the claim. So  
2 that claim had a specific solution that saved it that was  
3 inventive. And,

4 It's clear that is not the case here. Right?  
5 Because IBM is applying the Court's construction of "data  
6 object" as "a data structure" to include anything, right?

7 So this is from their infringement contentions.

8 And they say data includes "HTML files,  
9 JavaScript, JSON files, images and other data." So  
10 basically a data object is anything.

11 IBM next points to the Court's construction that  
12 says "objects being retrieved from the objects stored at the  
13 respective reception system, or, if the current versions of  
14 the objects are not present from the objects stored at the  
15 respective reception system, then from the network."

16 So all this says we use what is cached locally,  
17 and if it is not there, we go and get it from the network.

18 But that is the basic idea of caching. And  
19 courts have found that that idea is not inventive. Right?

20 So in the *Versata v NetBrain* in this District,  
21 the patent was about caching dynamic web pages. It is  
22 essentially what IBM is accusing in this case. And the  
23 Court held that the central concept is receiving information  
24 and a transmitting a response either by recycling the  
25 information you have or collecting the requested information



1 anew, which is no different than what these claims require.  
 2 Right? That is what a cache does. You use what you have.  
 3 If it is not there, you go get it from the source. That is  
 4 now Check ID.

5 IBM also talks a lot in its papers about how,  
 6 in its tutorial about how somehow this invention splits the  
 7 functionality between the server and the local reception  
 8 system computer.

9 But, again, the idea of splitting functionality  
 10 between a client and a server is not inventive. That was  
 11 the very issue in the *Device Enhancement* case in this  
 12 District. Again, that is another post-*Enfish* decision.

13 In that case, Judge Robinson said that is not  
 14 inventive, right? The server exchanges data with the  
 15 terminal device -- tasks are split between the client side  
 16 application and the remote application, albeit without  
 17 further guidance from the patent. That was the key point.

18 Such a broad claim, even though it relates to  
 19 a computer centric idea, is just the idea of using a  
 20 distributive architecture to increase the capability.  
 21 Right? And that is exactly the kind of pitch that IBM is  
 22 making here.

23 But that is, as Judge Robinson found, abstract.

24 Right? There is no, there is nothing in these claims that  
 25 would tell you how actually build a specific solution to

11

1 that. Right? IBM's patent doesn't tell you how to split an  
 2 application into pieces, what those pieces should look like,  
 3 it doesn't tell you how we can find those at the reception  
 4 system in a way it provides any new functionality. It is  
 5 just claiming the idea of using some stuff at a server,  
 6 using some other stuff that is stored locally. And that is  
 7 exactly the idea that Judge Robinson held was abstract and  
 8 unpatentable. And,

9 A similar idea was in the *CyberFone* case. In  
 10 *CyberFone*, it was about whether you take some data, you  
 11 split it up, you send it to different places. Is that an  
 12 inventive concept?

13 Of course, Judge Robinson and the Federal Circuit  
 14 said no, right? With taking, obtaining data separating it,  
 15 sending it to different places, that is not inventive concept.

16 Nor, of course, is combining data from different  
 17 sources. That was the issue in *Electric Power*.

18 So if IBM's pitch is that the ability to combine  
 19 data from a local machine with data from the remote server  
 20 is the invention, that can't be it; right? The Federal  
 21 Circuit said that combining information even specific  
 22 information and displaying it is not inventive.

23 Finally, IBM on the '849 patent, points to the  
 24 selective storing. The prefetching at ad. And though IBM  
 25 is going to contest I think later that that is the correct

1 construction, even though that construction, which I think  
 2 is right, just prefetching information to store is not  
 3 inventive; right? That is inherent in the idea of a local  
 4 store. You have to stock the local store. I recited  
 5 something going back to Roman legions; right? You have to  
 6 stock the local store for the soldiers.

7 And even in the context of advertising, right?  
 8 The *Ultramercial* case kind of rejecting that as one of the  
 9 steps in those claims. In those claims, one of the steps  
 10 was selecting an ad. And then you would offer the media in  
 11 exchange for watching the ad. But there was a preselected  
 12 ad as part of the step, and the claim was nonetheless abstract.

13 Of course, there is a slew of cases that confirm  
 14 that just fetching and storing information, whether it is a  
 15 particular content, like an advertisement or not, is not  
 16 inventive. Going from *Content Extraction* to *CyberFone* to  
 17 *Electric Power*. So that can't be the inventive concept that  
 18 saves these claims.

19 Finally, on the dependent claim, IBM points to  
 20 the storage control parameters being the magic inventive  
 21 concept, and they say that it is one of the mechanisms  
 22 underlying the as-needed retrieval elements of the patented  
 23 inventions.

24 But, of course, it is not a mechanism at all.

25 It is just a generic parameter that relates to what

13

1 information is cached. And, again, in the *Visual Memory*  
 2 case, this same issue came up. And if we look at the claim  
 3 that was at issue in that case, which is this one, it is far  
 4 more detailed, far more specific, far more concrete and far  
 5 more technical than any of the claims at issue in these  
 6 Prodigy patents. Judge Andrews nonetheless found it was  
 7 abstract.

8 But one of the components of that claim was  
 9 these first programmable characteristics which, like the  
 10 storage control parameter, determined what information was  
 11 stored in which of the three layers of cache in that system,  
 12 and whether it was code or data and whether it came from the  
 13 bus or somewhere else. And,

14 Judge Andrews, basically the same argument,  
 15 said that those programmable operational characteristics is  
 16 simply a generic concept. It determines a type of data  
 17 stored by the cache. And without an explanation the  
 18 mechanism for how this result is accomplished, it cannot  
 19 supply an inventive concept. And,

20 The same is true here. Just saying there is a  
 21 parameter that relates to what is stored is not a specific  
 22 solution or inventive concept. And,

23 Again we have to focus on the claims, right?

24 IBM, in their tutorial and otherwise, talks a lot about  
 25 Prodigy and how great it was. Now, IBM could have claimed

1 or drafted claims that covered the specific implementation  
2 of Prodigy and those claims may well survive 101 but those  
3 are not the claims they have. Right?

4 They tried instead to claim this very basic  
5 concept using some information that is stored at the local  
6 computer and combining it with some remote information. And  
7 that is just too broad. It is just too abstract and covers  
8 too much. And it's clear that it covers too much and IBM  
9 essentially admits in its opposition brief that it is not  
10 only trying to preempt the Web of these patents -- I mean  
11 let's be clear. Everybody who has been sued on these  
12 patents has been sued just because they use the World Wide  
13 Web. There has not been anything common that relates  
14 Groupon to *Priceline* to Amazon to Living Social except the  
15 use of the Web.

16 But they want to go beyond that. If you look at  
17 their opposition, they say, fine, here are some things we  
18 don't preempt. One alternative is to transfer the entire  
19 interactive application, the user reception system, at once  
20 instead of breaking it up into data objects. So they say  
21 you can avoid our patents by not breaking things up. Other  
22 than that, we own it. We don't break things up.

23 The next thing they say is: Another alternative  
24 is to required users to retrieve content from the server  
25 each time the user interacts with the application, instead

15

1 of storing data objects at the user reception system.

2 So they say, fine, the other way you can avoid  
3 our patent, don't store anything locally. But if you break  
4 things up or you store them locally, we own it. And these  
5 patents preempt it. And that is just, that is too broad.  
6 There is nothing in these claims, there is no contribution  
7 to the general knowledge in these claims that justify that  
8 ridiculous scope of preemption.

9 Thank you, Your Honor.

10 THE COURT: Thank you. We'll hear from plaintiff.

11 MR. OUSSAYEF: Good morning, Your Honor. Karim  
12 Oussayef for IBM. May it please the Court.

13 I won't belabor the law behind *Alice*, Steps One  
14 and Two since Your Honor is familiar, but I think there is a  
15 couple of points that are important to look at. And,

16 On slide 5, what we see here are some of the  
17 abstract ideas that are not -- some of the abstract ideas  
18 that have been found under *Alice* and those type of cases  
19 which are really ideas that are found outside of the  
20 computer system and brought within the computer realm like  
21 mathematical algorithms, fundamental economic and business  
22 practices, and claims about an idea itself without anything  
23 connected to technology.

24 What is not an abstract idea, however, is more  
25 elucidated in the case of *Enfish* and *McRO* which help specify

1 that *Alice* Step One inquiry with a little bit more rigor.  
2 And what it says is that the "directed to" inquiry isn't  
3 just whether there is something involved that is a patent  
4 ineligible concept but whether the claims are really  
5 directed to solving something that exists in the computer  
6 realm.

7 And what it found is that when the focus of the  
8 claims is on a specific asserted improvement in computer  
9 capabilities, that is when it is not an abstract idea under  
10 *Alice* Step One.

11 Similarly, *McRO* found that claims directed to a  
12 patentable, technological improvement over the existing  
13 computer techniques, that also passes Step One. And,

14 The recent case of *PalTalk Holdings*, which was  
15 just in May of this year, that was a Delaware case where  
16 "claims addressing a technical challenge ... unique to the  
17 world of interactive software applications shared over a  
18 computer network," that is something that is not an abstract  
19 idea under *Alice* Step One.

20 So the question here we should be asking  
21 ourselves is, are we focused on solving a problem in the  
22 computer realm or are we trying to solve a problem outside  
23 the computer realm and just trying to capture it by putting  
24 it on generic computer software?

25 So let's look at the answer to that question.

17

1 First, let's look at the complaint. The  
2 complaint which at this stage of the case must be assumed  
3 to be true, and which is backed up with by the evidence as  
4 well, indicates that the Filepp patents were conceived in  
5 the 1980s, when IBM was developing the Prodigy online  
6 system. And,

7 In that time frame, on slide 7, we see the  
8 second bullet point talks about how in the prior art, you  
9 had applications but they used a "dumb terminal" approach.  
10 And what that means is that all the data was transferred  
11 together to the user's computer at once instead of it being  
12 broken up into pieces and instead of being organized into  
13 partitions or areas of the screen where the user could  
14 interact with it.

15 So what the inventors developed in bullet point  
16 three is they developed an innovative method for presenting  
17 applications and advertising in a way that would take  
18 advantage of the user's computer because at the time, people  
19 were starting to buy computers that could use floppy disks  
20 that could compute at a local area where the user was. So  
21 to take advantage of that, if you break up content, you  
22 could have the user's computer put it back together because  
23 it's smart enough to do so. And,

24 Then by doing that, you can reduce the load  
25 on the whole system so that the host doesn't have to be

1 bothered with the request for everything every time. It can  
 2 just be asked for individual pieces of that or objects. And  
 3 then you can organize those to display it to the user.  
 4         So don't just take the complaint's word for it.  
 5 Also, if we look specification, that is exactly what is said  
 6 in the specification. So it is saying interactive computer  
 7 networks are not new. They're something that existed but we  
 8 want to improve it.  
 9         They involved in the past hierarchical  
 10 architecture of the central host computer. And in the  
 11 bottom highlighted part, in such networks, the host has  
 12 to do all the work. And that is the problem that causes  
 13 network slowdown.  
 14         Similarly, in the *PalTalk* case, the technical  
 15 challenge that was addressed was unique to the world of  
 16 interactive software application shared over a computer  
 17 network. So it fits "hand in glove" with the idea of  
 18 addressing something specific to interactive computers  
 19 networks and interactive applications.  
 20         The specification of the '967, the specification  
 21 of the '967 leaves no doubt that it is directed to improving  
 22 computer performance. It says that objects are structured  
 23 in an architecture that allows display data to be relocated  
 24 and reused on the screen to make up other screens, and  
 25 they can be dynamically created in response to the user's

19

1 request. And,  
 2         Then at the bottom quote on slide 9: Because  
 3 the processing formally done by the host is done by the  
 4 reception system, that is what allows the performance of the  
 5 system to be improved.  
 6         The '849 patent on slide 10 is specific to  
 7 advertising. And it talks about how you can use it for  
 8 advertising and you can see whether advertising is likely  
 9 to be used again and, based on whether it is likely to be  
 10 used again, store it at the user's computer so you can  
 11 selectively store advertising at the user's computer and  
 12 therefore response time is reduced.  
 13         So what we see here on slide 11 is a  
 14 demonstration of this. This is, on the left-hand side, a  
 15 representation of sending down the entire application, the  
 16 entire command menu, the entire advertising down to the user  
 17 in a sequential manner. So that is the problem that existed  
 18 in the prior art. And,  
 19         The solution was to break it up into pieces, as  
 20 we'll see on the next slide. But the *MAZ Encryption* case  
 21 explains that when you disparage the prior art and you  
 22 explain why it was wrong and what the technical problem was,  
 23 that helps determine something is patent eligible.  
 24         On the next slide here, 12, we see how the  
 25 Filepp patents solve the "dumb terminal" approach. This is

1 an adaptation from Figure 3a and it shows how in application  
 2 it can be broken up into different segments. The blue here  
 3 is representing what can be stored at the user's computer.  
 4 The green, what is stored at the host computer. And then  
 5 it can be combined on the fly when the user wants to do  
 6 something.  
 7         So here on the left-hand side is a little bit  
 8 busy, but what you see is the next path jump in the window  
 9 portion up in blue are what are being retrieved from the  
 10 user's hard drive and the user's system, which is on the  
 11 bottom, and the other components are being retrieved from  
 12 the file server or the host system to combine to create the  
 13 presentation that the user sees. And that is supported by  
 14 the quotes from the specification on the right-hand side.  
 15         A common refrain during opposing counsel's oral  
 16 argument, that is just what the specification says. That  
 17 is not in the claims.  
 18         If we look at the claims here on the next slide,  
 19 we see that it is in the claims. In fact, it talks about on  
 20 the left-hand side from the '967 patent, claim 1, generating  
 21 a screen display. And,  
 22         That is at a reception system. You create it  
 23 out of portions. The portions are being constructed of  
 24 objects. Those objects can be dynamically combined from  
 25 objects stored at the reception system or unavailable from

21

1 the network. Those objects can be used in more than one  
 2 application so they can be reused to reduce demand on the  
 3 host.  
 4         You can have two different partitions: one  
 5 for presenting applications and one for presenting command  
 6 functions. The command functions allow you to switch  
 7 between applications which is the entire idea of having  
 8 reuse of objects across applications to decrease demands on  
 9 the host.  
 10         This is in stark contrast to the prior art  
 11 which did not have the idea of modular applications or of  
 12 partitions that could be used for specific content. And,  
 13         Then "selectable to permit movement between  
 14 applications" is how you are able to harness the ability of  
 15 reuse of objects.  
 16         On the right-hand side, you see something similar.  
 17 The '849 patent is directed specifically to advertising.  
 18 And we talk about how you structure advertising so that it  
 19 can be used in a combination of applications. And then you  
 20 selectively store it to the user's reception systems so that  
 21 you can use the objects that are most likely to be demanded by  
 22 the user in the future.  
 23         All of this is in the claims.  
 24         If we look at -- so we looked at the claims, the  
 25 specification, the complaint. How else do you know that

1 this is really directed to a specific technological problem?  
 2 The prosecution history tells the same story. It talks  
 3 about how the patents were developed as part of the Prodigy  
 4 service, and how that called for a new approach.

5 In the middle highlighted part on slide 15, it  
 6 talks about how you need to reduce response time because you  
 7 needed it to supply things to so many users, and you had to  
 8 break away from the dumb terminal approach that is in the  
 9 bottom of slide 15.

10 On slide 16, it explains how this is  
 11 accomplished: by breaking data and program code into  
 12 objects and then harnessing the power of the subscriber's  
 13 PCs so you can compose things on the fly.

14 So I think one important thing to look at, too,  
 15 is the Court's prior Report and Recommendation. In there,  
 16 the Court already found, on the way to finding that the  
 17 patent was patent eligible under *Alice* Step Two, found  
 18 that the claims can be seen as an attempt to improve the  
 19 functionality of computer networks.

20 I think that is inevitable from all the evidence  
 21 of the complaint, the specification, the claims, and the  
 22 prosecution history. And *Enfish* tells you straight up that  
 23 claims whose claim focus is on an improvement to computer  
 24 functionality is patent eligible.

25 *McRO* tells you that claims directed to a

23

1 patentable, technological improvement are patent eligible.

2 So the finding that the Court has already made  
 3 supports patent eligibility under *Alice* Step One and that is  
 4 why under *Enfish* and *McRO*, the claims are patent eligible.

5 The PTAB decision reached a similar result. And  
 6 I think what they really focused on, the PTAB decision, was  
 7 not the meat of what the PTAB really found. What the Patent  
 8 -- what the PTAB rested its argument on or its decision on  
 9 was that the '849 patent was almost exclusively dedicated to  
 10 solving a problem arising in computer technology bandwidth  
 11 with a computerized solution, local storage, and thus found  
 12 the claims to be patent eligible. And the PTAB didn't rely  
 13 on a particular construction of the claims. It found that  
 14 relying on a broadest reasonable interpretation.

15 So let's look at Groupon's characterization of  
 16 the claims as "local storage."

17 If you look at the arguments that opposing  
 18 counsel made in their oral argument, they said *Enfish* stands  
 19 for the principle that you should not oversimplify Step One.  
 20 But in their briefs, they oversimplify the claims as  
 21 directed just to local storage.

22 If you look at their *Markman* brief, though, you  
 23 see the truth of the claims come out where they admit that  
 24 the claims are directed to something far more specific.

25 They say specifically the sole independent claim of the '967

1 patent is directed to concurrently presenting applications  
 2 and commands on a single screen display. And the five  
 3 independent claims of the '849 patent are directed to  
 4 concurrently presenting applications and advertisements on  
 5 a single screen display. The displays are constructed by a  
 6 reception system. Software running on the users' computer.  
 7 The display layout includes separate partitions which  
 8 applications, commands, and advertisements are selected  
 9 separately but concurrently displayed. And they go on to  
 10 explain how the claims are directed to something far more  
 11 specific.

12 Under their own interpretation of *Enfish*, that  
 13 should be the inquiry of how to determine what the claims  
 14 are directed to. What are they really doing here?

15 I think that their analogy which they made in  
 16 the oral argument as well, that local storage was known by  
 17 the Romans, is really inapt for several reasons.

18 If you think about it, it just doesn't make  
 19 sense because local storage in the local world has nothing  
 20 to do with local storage here. Even if you were just to  
 21 look at the idea of local storage, the constraints are  
 22 completely different. Unlike physical objects, the same  
 23 data objects can be stored in different locations. And  
 24 multiple objects can be combined on the fly because you can  
 25 send things immediately from two locations when you need it

25

1 unlike, for example, buildings or patibles or whatever else  
 2 in the supply chain for the Romans. The solutions are  
 3 completely different. The Filepp patents say store things  
 4 at different locations and break them up. The Roman solution  
 5 is let's get everything to the village and we want it back.

6 The technological challenges are completely  
 7 different. It's not where objects are located, which is the  
 8 problem with the Filepp patents, it is how do you make sure  
 9 that processing power is used most efficiently which doesn't  
 10 even make sense to ask in their example.

11 They don't try to address anything dealing with  
 12 displays, applications, partitions, objects, selectively  
 13 storing, command functions, and advertising because all of  
 14 that doesn't make sense in the real world.

15 Finally, if we look at their cases that they  
 16 rely on most heavily, you see a common theme here. You have  
 17 *Electric Power Grid*. That dealt with taking an off-line  
 18 idea of using electrical grids and how to analyze them, and  
 19 just said let's do it on a computer.

20 If you look at *Content Extraction*, that took  
 21 the idea of how do we process information from hard copy  
 22 documents, something that had been done by humans, let's do  
 23 it on a computer.

24 If you look at *Ultramercial*, it talked about  
 25 using advertisements as exchange of currency, something that

1 had been used, for example, on newspapers or TV in the past.

2 Let's just do it on a computer.

3 In contrast, if you look at *McRO*, *Enfish* and the  
4 Filepp patents, it talks about something that is already on  
5 a computer. How do we make that better? How do we improve  
6 it?

7 So the idea here is are we targeting a problem  
8 that is on a computer? And the evidence here is uniform  
9 that that is exactly what the Filepp patents are doing.

10 Groupon relies heavily on the *Visual Memory*  
11 case. They say, well, this proves that *Enfish* and *McRO*  
12 didn't change the law and we can distinguish using the same  
13 analysis of visual memory.

14 But *Visual Memory* simply recognized something  
15 that had already existed in the past, which was using  
16 physical devices or computer devices generically, does not  
17 confer patent eligibility. We knew that before.

18 Really what it is saying is you can't just say,  
19 hey, I'm going to do something that existed in the human  
20 realm and put a computer there. But that is not what the  
21 patents are doing. The patents are improving a system that  
22 is already on the computer.

23 And the *Visual Memory* case also recognizes  
24 that the levels of abstraction at *Alice* Step One must be  
25 consistent with the claims themselves. If you look at the

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1 claims on slide 22 of the *Visual Memory* case, I put example  
2 there of claim 1. It is really just saying a main memory, a  
3 cache, and programmable, operational characteristics.

4 There is no meat. There is nothing there.

5 This case is far more analogous to *PatTalk*  
6 which I mentioned a couple times before. *PatTalk*  
7 examined the specification and noted that there is no apt  
8 brick-and-mortar analysis or analogy that could be used and  
9 noticed how the specification was focused on how to improve  
10 computer technology. Specifically, interactive software  
11 applications.

12 That is exactly what we have here.

13 *Alice* Step Two --

14 THE COURT: Before you move on to Step Two. So  
15 is it IBM's view, after all that, that the dispositive  
16 question of Step One is are the claims directed to improving  
17 computer function and that is all I have to ask?

18 MR. OUSSAYEF: Yes, but I think the key question  
19 is improving computer functionality. So the cases that we  
20 see which talk about, hey, it has computer components in  
21 there, the question really has to be are you improving those  
22 computer components or not?

23 So, yes, Your Honor, if it really is focused on  
24 improving a computer functionality like decreasing bandwidth  
25 or increasing the number of users, then it passes *Alice*.

1 THE COURT: So that would seem to directly

2 contradict Judge Andrews in *Visual Memory*. I understand  
3 you parsed through the holding, but that question, is it  
4 dispositive? He seems to say no, and you would have me say  
5 yes.

6 MR. OUSSAYEF: I think in *Visual Memory*, what  
7 you are seeing there is not something that is focused on  
8 improving the computer. I think it is using -- so if we  
9 look at *Visual Memory*, we have computer components, main  
10 memory, a cache, and programmable operational characteristics.  
11 But it does not say how that is improving the computer.

12 So those are components. They might be used  
13 for useful things but it is not addressing a problem that  
14 existed. And it's not anything that is more than just the  
15 components themselves. It's a structural -- it's claiming a  
16 structural thing without any kind of solution to a technical  
17 problem.

18 THE COURT: I'm seeing that as slightly  
19 different than the question I'm asking. If we look at slide  
20 5 that defendants showed us, I'm sure you are familiar with  
21 it, they quote Judge Andrews as specifically saying:  
22 Contrary to plaintiff's argument -- the plaintiff there, of  
23 course -- the question of whether a given claim improves the  
24 way a given computer works is not what by itself determines  
25 it. I understand IBM's position to be directly contrary to

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1 that. I understand you have an argument to distinguish his  
2 holding but on that question of law, you disagree.

3 MR. OUSSAYEF: No, Your Honor. In fact, right  
4 after that quote by Judge Andrews, there is another quote  
5 that says, actually, the problem that, or the way you solve  
6 the problem or the way you ask the question under *Enfish* is  
7 not whether it improves a computer generally but whether  
8 there is a specific technical problem that the claims seek  
9 to improve.

10 So there are two quotes that come from the  
11 *Enfish* decision, and the plaintiff in the case cited the  
12 first quote where it discussed the proposition more  
13 generally. Where the *Enfish* Court said, if you look  
14 generally to whether there is an improvement, then that  
15 indicates that you might pass Step One. And there is a  
16 later quote that says the specific inquiry is whether  
17 there is a specific solution that is directed to computer  
18 problem.

19 So Judge Andrews was kind of comparing the more  
20 loose characterization of *Enfish* versus the more strict and  
21 rigorous characterization of *Enfish* later on. It's right  
22 after the quote that the defendants put up on their slide 5  
23 in the Andrews's decision.

24 THE COURT: All right. So if I want to  
25 understand IBM's position, you do agree that I have to do

1 more work at Step One than simply ask are these claims  
2 directed to improving computer technology. Answering that  
3 question may get me a long way toward siding with you but  
4 I'm not done. Is that fair?

5 MR. OUSSAYEF: Yes, I think that is fair. I  
6 think if you add that there needs to be a specific  
7 improvement that you are focused on as opposed to just  
8 asserting that there is an improvement without having  
9 anything to back you up.

10 So if you had a patent that just said, hey,  
11 here are my components, I improve computers and there is  
12 no detail in the specification, there is nothing else that  
13 supports it from the state of the art. There is nothing  
14 that explains why that is an improvement in computer  
15 capabilities. I think in that case, maybe that is a gray  
16 area for *Alice* Step One. I think that is not at all what  
17 we have here.

18 THE COURT: All right. Then in terms of the  
19 relationship of these claims to the Prodigy embodiment, and  
20 this question may spill over to Step Two, and fair enough if  
21 you want to answer it as to Step Two, but the argument from  
22 defendants is part of the problem here is you didn't focus  
23 the claims on Prodigy and it's much, much broader than that.  
24 What is IBM's response to that?

25 MR. OUSSAYEF: I don't think it is much broader

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1 than that. We'll go over both the specific implementation  
2 details that are important here, both from the claims  
3 themselves and also the Court's construction of those  
4 claims, but also we'll go over the preemption issue and  
5 we'll see why defendant's characterization that this covers  
6 any meaningful way of displaying content on the web is  
7 simply incorrect.

8 THE COURT: Okay.

9 MR. OUSSAYEF: So what is an inventive concept  
10 under *Alice* Step One?

11 This is what *DDR Holdings* says, is that if you  
12 are addressing a challenge that specifically arises in the  
13 realm of computer networks and where the claimed solution is  
14 necessarily rooted in computer technology, that is something  
15 that passes *Alice* Step Two.

16 Claims that specify how interaction between  
17 computers may be manipulated.

18 *Bascom* also cautions that we need to look at the  
19 combination of elements, so taking potshots at just isolated  
20 ideas like, hey, storage is new or organizing data is new,  
21 but -- sorry, is not new, et cetera, as the defendants do,  
22 did in their oral argument is not sufficient. You must  
23 address the claims as a whole and not just certain claim  
24 constructions or certain concepts from the patents without  
25 addressing it in its entirety.

1 So if we look at *Alice* Step Two, a theme tends  
2 to emerge, which is even if you are taking -- even if you do  
3 have an abstract idea, bringing it into the computer realm  
4 involves specific computer problems and computer solutions.  
5 It can still be ineligible under Step Two. So the question  
6 is, do you have to do something innovative on a computer in  
7 trying to adapt an abstract idea to a computer?

8 So the Filepp patents solve Internet centric  
9 problems. This is very similar to what we discussed  
10 previously. It kind of melds with some of the same evidence  
11 we presented for *Alice* Step One, so I won't belabor the point.  
12 But the idea was that the Filepp patents were addressing a  
13 problem that is specific to network programming: bottlenecks,  
14 slow down, limitations on a number of users, et cetera. And  
15 the solution was on a way to reduce host processing.

16 And what *DDR Holdings* says is that the claim  
17 solution amounts to an inventive concept for resolving this  
18 particular Internet centric problem, rendering the claims  
19 patent eligible. That is what we have here.

20 How does the patent do it?

21 Well, the patent does it by splitting up what  
22 used to be sent down in its entirety into objects. Those  
23 objects can be organized into logical partitions. The  
24 partitions can be retrieved and selectively stored as needed  
25 and that is what we went over previously. And *DDR Holdings*

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1 says that claims that specify how interactions between  
2 computers are manipulated, that also passes *Alice* Step Two.

3 So let's look at the Court's previous  
4 constructions and just see how that interplays with the  
5 claim language.

6 The idea of formatting -- and so what we have  
7 here on this table on the left is the selected claim terms  
8 that were construed by the Court previously.

9 In the middle, we have the actual constructions  
10 from the *Priceline* case. And in the right, you have the idea  
11 of inventive concepts. So the idea of formatting advertising  
12 for potential use of the plurality of applications, that is  
13 important because at the time, there was no reuse in that  
14 kind of way because everything was used in its entirety as a  
15 monolithic construct that got pushed down. So formatting  
16 advertisements to make sure they could be used for multiple  
17 applications or were compatible allows you to reuse  
18 advertising and minimize network bandwidth. That is on the  
19 right.

20 Next to each of the inventive concepts we've  
21 supplied is an illustrative quotation from the patents.

22 "Selectively storing" was construed as  
23 "reception in storing, in anticipation of display."

24 The idea of anticipating what the user might  
25 want and storing at the users' computer meant that you could

1 request things at different times. So it's not you were  
2 asking for everything at once. You could ask for it once  
3 and then ask for the rest later on.

4 So that was also an inventive concept.

5 The "storage control parameter." Defendant kind  
6 of belittles this concept but the idea of a parameter that  
7 specifies initial or continued storage is an important  
8 concept, too, because if you send a parameter that says  
9 whether or not you should store it, what the patent says is  
10 that that allows you to store things that are more likely to  
11 be used by telling the reception system that it is a good  
12 thing to hold on to for later.

13 The "objects being retrieved" claim element, the  
14 Court construed it as a kind of "if-then" framework where  
15 you can take some of the objects from the host or from the  
16 reception system depending on whether they're located at the  
17 reception system or not. That is the idea of dynamically  
18 retrieving objects from both locations and combining it. And,

19 The idea of the "applications" being a sequence  
20 of pages opened at the screen, the idea of the sequence of  
21 pages is important because together with the language of  
22 "objects may be used in more than one application," it  
23 allows for the transition between those applications to  
24 reuse objects. That is another way you decrease the use of  
25 bandwidth.

35

1 If you look at Groupon's motion, opposing  
2 counsel said something that was a little bit off, which was  
3 IBM hung its entire hat on the construction of "objects."

4 Well, IBM actually offered many constructions  
5 and explained how all of them were innovative in the  
6 previous briefing in the *Priceline* case, and it focused on a  
7 number of different terms. And the reason why Groupon is  
8 focusing on "objects" is because that is one of the few  
9 terms where IBM didn't get the full construction it had  
10 requested.

11 But Groupon ignores the construction of  
12 "application," "permits random movement," "storage control  
13 parameter," et cetera, et cetera, and as shown on the  
14 previous slide, those all involve inventive concepts.

15 THE COURT: Do you think that the construction  
16 of objects helped your defense on 101 and Step Two at all?

17 MR. OUSSAYEF: I think it did. On the next  
18 couple of slides, we'll see how the use of the "objects" in  
19 the claims and the Court's construction of the terms that  
20 contain the term "objects" show that they're inventive even  
21 if "objects" is simply construed as "data structure."

22 *Bascom* also invites the idea of just focusing on  
23 one idea or one part of the claim in isolation and putting  
24 blinders as to the other constructions or the other terms.  
25 They need to be evaluated as an ordered combination.

1 So to your point, Your Honor, the construction  
2 of "objects," the basis for that construction was that there  
3 is other language in the claims. This is from the Court's  
4 claim construction opinion.

5 There is other language in the claims that  
6 dictate that objects have a predefined structure and that  
7 at least some of the objects may be used in more than one  
8 application, which implies that a uniform format for objects  
9 designed for use with multiple applications is already in  
10 the claims, so including uniform would create redundancies.  
11 So it is not so much that the Court rejected the idea that  
12 "objects" are specific in some way but rather the Court was  
13 worried about putting redundancies into the claims.

14 Furthermore, if we look at slide 31, the Court  
15 construed terminology that contains the word "object" in it.  
16 So claim 1 of the '967 patent, there is claim language about  
17 the objects being retrieved from objects stored at their  
18 respective reception system, or if the current version of  
19 objects are not present from the reception system, then from  
20 the network.

21 And that kind of dynamic recreation of content  
22 from objects from both places is something that still shows  
23 that the idea of breaking up content into objects and then  
24 dynamically putting it back together is an inventive concept.

25 And this is a mechanism that the patent

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1 specifically says was invented. It's described at the '967  
2 patent at lines, column 1, lines 46 through 55.

3 Likewise, the Court's construction of the '849  
4 patent, "selectively storing" refers to selectively storing  
5 objects. And it explains that how prefetching advertising  
6 objects, how the term means prefetching advertising objects  
7 and storing at a store established at the reception system  
8 in anticipation of display concurrently with the  
9 applications.

10 This is also an inventive concept that the  
11 patent specifically calls out.

12 It says how that minimizes the potential for  
13 interference between the supply of interactive service  
14 applications and advertising. That is the '849 patent at  
15 column 2, 54 through 58.

16 So it is not just the term "objects" in  
17 isolation. It is the Court's reasoning in finding that the  
18 term "objects" also encompasses some of those limitations  
19 that IBM sought to explicitly incorporate. Those were  
20 already implicitly in the claims and it is the use of the  
21 word "applications" and the entire phrase involved, not just  
22 "objects" by itself.

23 This isn't one of those patents where it just  
24 says "objects" or "data structures." It doesn't tell you  
25 anything about how to use them.

1 Groupon really doesn't analyze the independent  
2 claims in any detail as well. So there was a little bit of  
3 discussion of some of the independent claims and how the  
4 storage control parameter really wasn't helpful.

5 That really doesn't take into account the  
6 combination of the storage control parameter with objects  
7 that are designed to be stored at the reception system,  
8 reused if needed in applications that could have objects  
9 that are used in one application and then another and then  
10 requested only if needed.

11 The "storage control parameter" adds the idea  
12 that you can help the reception system know what objects to  
13 hang on to by giving it information through a storage  
14 control parameter.

15 The '849 patent also has dependent claims that  
16 were not discussed by Groupon. This talks about storing  
17 object identifications based on establishing characteristics  
18 for the reception system users. So if you know a user is  
19 likely to request, say, a special kind of deal on Groupon's  
20 website, that characterization is useful because you can  
21 have them store that type of data at the reception system  
22 and then the next time they visit that website, they're more  
23 likely to reuse that object and not have to request it again  
24 from the host. That is an inventive concept as well. That  
25 is a specific idea that is called out by the '849 patent as

1 delivery of regional broadcasting. So something that, you  
2 know, existed with radio signals and did not have a further  
3 specification of how that was done.

4 If you look at the cases we cite, it's really  
5 about computer centric problems, solutions, that is *DDR* and  
6 *Bascom*, and the Filepp patents fall into this category  
7 because they deal with the problems of network bandwidth and  
8 the fact that the host had to do all the user data requests.

9 And the solutions are the similar type of thing  
10 where you are doing something that really doesn't make sense  
11 in the real world, splitting content up and shipping it to  
12 different areas of the world and then reducing processing in  
13 that way. That is not something that happens with Roman  
14 armies or with real world situations.

15 So really one way of thinking about *Alice* Step  
16 Two is even if you were convinced that it was the abstract  
17 idea of local stores that we're talking about, we don't  
18 think it is, but even if you were convinced of that, is  
19 bringing the idea of local storage on to a computer, is that  
20 something that involves computer specific challenges?

21 Yes, it does, because local storage to the  
22 computer has nothing to do with local storage in the real  
23 world. It is done for different reasons. It has different  
24 technical constraints and it succeeds for different reasons.

25 So now, the last part is alleged preemption.

39

1 well.

2 So when we look at their *Alice* Step Two cases,  
3 there is really no computer centric problem or computer  
4 centric solution that is called out by their cases.

5 So the cases they primarily rely on is *Apple v*  
6 *Ameranth*, *CyberFone*, and *Affinity Labs*.

7 *Apple* dealt with the idea of taking a menu for  
8 ordering like at a deli and then just adding computer  
9 components to do it on the Internet. So it was not solving  
10 a computer problem, it was putting a human world problem on  
11 the Internet or arguably not even a human problem at all.

12 *CyberFone* was about exploding information, and  
13 the Court said what does exploding information mean? It  
14 means sending it somewhere where else. But that's the same.  
15 That is an information gathering technique.

16 So if you look at defendant's cases that say  
17 organizing data isn't something that passes *Alice* Step One or  
18 Two, they're really missing the point because the idea is not  
19 organizing data just for, you know, keeping things in the  
20 right place. The idea is let's make computers work better by  
21 splitting things into parts and dynamically recreating it.  
22 It's not the idea of just organizing things that humans had  
23 been doing forever to organize correspondence or e-mails or  
24 that kind of thing.

25 *Affinity Labs* talked about out of region

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1 So their assumption that we preempt all Web  
2 pages is simply an assertion, and there is no evidence to  
3 back it up. Even if there were evidence, that is not  
4 something that is decided on a judgment on the pleadings  
5 procedural standpoint.

6 It ignores several ways in which Groupon could  
7 provide its website over the Web without infringing the  
8 Filepp patents. That is on slide 38. Such as:

9 Presenting all applications on one page.

10 Storing everything at the host.

11 Not configuring objects or structuring  
12 advertisements for potential use with multiple applications.

13 Not using parameters that control storage of  
14 content.

15 Not using command functions, et cetera.

16 The patent is explicit that there are some prior  
17 art ways of doing interactive computer applications, but  
18 that it is not claiming them. It is improving them. That  
19 is at the bottom of slide 38.

20 This isn't all theoretical either. We pointed  
21 out specific examples and Groupon kind of dismisses them out  
22 of hand and says, well, that doesn't really count. Those  
23 aren't really examples of things that we could do that don't  
24 infringe.

25 But I think they're important to review.



1 First, Groupon already sends some of its Web  
2 pages using PDFs and it sends the entire PDF to the user in  
3 kind of the prior art way that we were discussing earlier.

4 All the content is sent at once. It is not  
5 broken up in any way. There is no partitions there. That  
6 is an example of how they could display content to a user  
7 if they wanted to.

8 We also didn't accuse Groupon's blog website.  
9 The reason why is because the blog doesn't have command  
10 functions for moving from one application to the next.

11 There are many other examples. For example, we  
12 don't accuse their mobile applications of infringing the  
13 '967 patent.

14 You know, they're kind of taking a confirmation  
15 biased point of view. They say, look at the entities that  
16 IBM has asserted against. It's asserted against all five of  
17 these companies so it must mean it preempts everything.

18 Not so. There is a detailed analysis that  
19 takes place before asserting against some companies and some  
20 companies end up infringing and some companies don't end up  
21 infringing.

22 Just saying that because there has been an  
23 assertion against multiple targets that there is a presumption  
24 concern simply doesn't make sense.

25 The Court in the *Priceline* action and the Court

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1 here we believe as well should decide that on the present  
2 record, it is not clear how many of defendant's websites are  
3 at issue, whether the patents cover almost all websites in  
4 existence. In fact, there is evidence that they do not.

5 Whether there are other methods that exist of  
6 locally storing information and advertising for use in  
7 presenting displays to a user. And there is examples that I  
8 have given on the previous slide of other ways to do it.

9 So their argument that we attempt to the preempt  
10 all standard uses of the Web which rely on local storage is  
11 simply not true.

12 And there is examples of presenting content to  
13 the user, using local storage which we have given to the  
14 Court which do not fall under the patent, so that the  
15 patents do not raise preemption concerns.

16 And if the Court must decide these issues now,  
17 Groupon's motion should be denied under the *MAZ Encryption*  
18 case.

19 The Groupon's arguments also ignores the  
20 findings in the Groupon action that additional factual  
21 inquiry as to how inventive the patents were would be  
22 helpful as well.

23 Just like in the *Priceline* case, Groupon can't  
24 circumvent a factual inquiry into the innovative nature of  
25 the claimed inventions.

1 Groupon even admits that the inventions predate  
2 the World Wide Web. So they're citing cases of things, of  
3 patents that came out in 2006 or 2008 that try to capture  
4 the Web after the Web existed for ten years and they say  
5 those cases are analogous to what we have here.

6 Not so. The Filepp patents came before the Web  
7 and they really were innovative at the time because what  
8 looks obvious to defendants right now or not innovative  
9 to defendants right now is not something which was not  
10 innovative at the time. And the complaint, the patent, the  
11 prosecution history and the claims all indicate that it was  
12 innovative idea and thus it should pass *Alice* Step Two.

13 Thank you.

14 THE COURT: Thank you very much.

15 Mr. Hadden.

16 MR. HADDEN: Thank you, Your Honor.

17 Let me start with something that counsel for  
18 IBM said toward the end. They sort of admitted that this  
19 patent is about moving local storage on to computer systems.  
20 And he says that doing so would create or provide specific  
21 challenges, technical challenges. And that is no doubt  
22 true, but what they're claiming is exactly that idea, moving  
23 local storage on to computers. And that is an abstract  
24 idea.

25 Now, if they had claimed their specific solution

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1 to the technical challenges of applying the idea of local  
2 storage to computers, their specific solution would be  
3 patentable. It would be an inventive concept perhaps. But  
4 that is not what they are patenting. And they essentially  
5 admit that is not what they're patenting.

6 So their argument, going back to Step One which  
7 is, as Your Honor asked -- right? -- is their argument, if  
8 it touches computers, if the patent specification says it  
9 is a gee whiz great improvement, does that get you 101  
10 immunity? And that is clearly not the law, right? It is  
11 not the law in this District. It is clearly not the law in  
12 the Federal Circuit, right?

13 The *IV v Symantec* case, the Federal Circuit  
14 found that virus scanning on a network was abstract and  
15 invalid. It's clearly a case that is aimed at improving  
16 computer networks. That is what that patent is about.

17 *Appistry v Amazon*, distributed computing across  
18 processors. That is directed at improving computers. No  
19 doubt the specification was full of lies about what a great  
20 improvement it was. Invalid, that is not the test. Right?

21 The test after all those cases, *Enfish*, *TLI*,  
22 *Affinity Labs* is whether the claim is to a specific  
23 technical solution. That's the test. And they haven't  
24 pointed to it. Right? They got up here on Step Two and  
25 said this is inventor concept, this is inventor concept,

1 this is inventor concept.

2 Just going through the claims and saying the  
3 specification said this is cool, the specification said this  
4 is cool, that is not an inventive concept under Step Two of  
5 *Alice*.

6 The inventive concept is the specific technical  
7 solution that takes that abstract idea and makes it  
8 something concrete you can actually own. And they haven't  
9 pointed to what that is in these claims in their briefs and  
10 they didn't point to it, Your Honor, today because it's not  
11 there.

12 It clearly is not data objects having a  
13 prescribed data structure. That is a totality. A data  
14 structure has a structure. It is a structure. That is  
15 meaningless.

16 So at the end of the day, I didn't hear any  
17 concrete solution. And there is none because they choose to  
18 claim the idea itself. And the argument that somehow you  
19 can do that if you are in the realm of computers and your  
20 specification says you made great advances, that is just not  
21 the law.

22 On the preemption issue, I mean their arguments  
23 speak for themselves; right? And they get up here and say,  
24 don't worry, we can take down the World Wide Web. You can  
25 still download PDFs.

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1 That is what we're left with? I think it is  
2 clear what this patent provides and what the claims disclose  
3 cannot possibly justify that range of preemption. Thank  
4 you, Your Honor.

5 THE COURT: Thank you. All right.

6 MR. OUSSAYEF: Just briefly, Your Honor.

7 Your Honor, Karim Oussayef again.

8 The presumption issue is a little bit of a  
9 moving target because every time we come up with a  
10 noninfringing mechanism, now they're saying, well, are you  
11 saying everything except for that noninfringing example?  
12 Obviously not. There are many other examples. Another way  
13 would be not selectively storing advertisements but pushing  
14 them down regardless.

15 There are many other examples as well. But  
16 suffice to say, there are examples of noninfringing ways  
17 that can be determined from the claims themselves.

18 But I wanted to kind of address the case of  
19 *Visual Memory* in a little bit more detail since the parties  
20 are going back and forth about it.

21 What we have here, is underlined here is Judge  
22 Andrews in the *Visual Memory* case. And what I was trying to  
23 explain earlier and which might have not been entirely clear  
24 is that although the Court rejected plaintiff's argument  
25 that the question is whether a claim improves the way a

1 computer works, and said that that by itself is not

2 determinative. The Court went on to cite later on in *Enfish*  
3 the idea that the question is whether the focus of the  
4 claims is on a specific asserted improvement in computer  
5 capabilities, i.e., the self-referential keyboard or set  
6 of process that qualifies as an abstract idea for which  
7 computers are merely invoked as a tool.

8 So here what we really have is the question of  
9 are you using computers as a tool to do something that  
10 exists outside the computer realm or do you have a specific  
11 solution? And,

12 The answer here is we have a specific solution.  
13 The specific solution is not local storage. I went over  
14 in the claims specifically how local storage is not enough.  
15 The idea of breaking things up, storing parts of them at the  
16 user's reception system, parts of them at the host computer,  
17 then having applications which can be navigated, which we  
18 use those objects, and then dynamically combining them when  
19 you need them and selectively storing them at user's device.

20 Devices based on the likelihood that they be  
21 reused, those are all concepts which were frankly unaddressed  
22 and the sum total of the argument was I didn't hear anything  
23 about inventive concepts, it's just local storage. That is  
24 not true.

25 So, therefore, the patents are eligible, if not

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1 under Step One, under Step Two.

2 THE COURT: Thank you. Mr. Hadden, you can have  
3 the last word, if you want to add anything.

4 MR. HADDEN: Unless Your Honor has questions.

5 THE COURT: No, not at this time. We will take  
6 a short recess.

7 (Brief recess taken.)

8 \* \* \*

9 (Proceedings reconvened after recess.)

10 THE COURT: Have a seat. I think we're ready to  
11 move on to *Markman*. You may proceed.

12 MR. OUSSAYEF: Your Honor, my colleague, Laurie  
13 Stempler will begin with the *Markman* arguments.

14 THE COURT: Okay. That's fine.

15 Good morning.

16 MS. STEMLER: Good morning, Your Honor. Laurie  
17 Stempler from Desmarais on behalf of IBM. May it please the  
18 Court.

19 We passed up a binder that's organized that is  
20 divided by the disputed terms with a copy of the patents in  
21 the back for Your Honor's reference.

22 THE COURT: Thank you.

23 MS. STEMLER: So I would like to begin with Tab  
24 A, page 7.

25 This is just -- oh. Excuse me.

1 (Elmo settings adjusted.)

2 MS. STEPLER: I am not going to -- so if we  
3 turn to slide 7, I'm not going to go through a detailed  
4 overview because my colleague Mr. Oussayef had gone over  
5 that in detail during his presentation earlier except to  
6 note that something useful to keep in mind during this  
7 presentation is that in the prior art for the Filepp  
8 patents, the entire application was being sent to the  
9 reception or the user terminal. If the user wanted to  
10 assess it again, then the entire application had to be  
11 sent again.

12 Contrast that with the invention of the Filepp  
13 patents, '967 and the '849, and you have objects being  
14 selectively stored and retrieved locally at the reception  
15 system which allows for more flexibility and more efficiency.  
16 And as Mr. Oussayef mentioned the '967 patent is directed to  
17 a command function, an application command function that  
18 manages the display and the '849 patent is directed to also  
19 having advertising being selectively stored and presented as  
20 needed.

21 So I'd like to begin by discussing what we've  
22 termed the "partition" disputed terms. And the reason that  
23 we grouped them together, there are five of them, is that  
24 there are issues that are common to all of them.

25 The first thing that is the same is that they,

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1 all of them had either the word "partition" or the word  
2 "portion." The parties have already agreed that those words  
3 mean the same thing.

4 The "partition" terms of the '967 patent are,  
5 "a first partition for presenting applications,"  
6 and

7 "a second partition for presenting a plurality  
8 of command functions."

9 We have highlighted those in exemplary claim 1.

10 In the '849 patent, the disputed partition terms  
11 are,

12 "structuring applications so that they may be  
13 presented through the network at a first portion of one or  
14 more screens of display"/"structuring applications so they  
15 may be presented at a first portion of one or more screens  
16 of display." And,

17 "at a second portion of one or more screens of  
18 display concurrently with applications."

19 So something to keep in mind is that the parties  
20 have agreed that the words "partition" and "portion" should  
21 be given their plain and ordinary meaning and those terms  
22 were also given their plain and ordinary meaning in the  
23 previous *Priceline* litigation.

24 The reason that that is important is if we look  
25 at the first disputed partition term, "a first partition for

1 presenting applications."

2 Well, the term "partition" we've already agreed  
3 on, and the term "applications" we have an agreed  
4 construction for that as well.

5 That leaves the words "a first" and "for  
6 presenting."

7 There is a presumption, as Your Honor knows,  
8 that the claim language should be given its customary and  
9 ordinary meaning, and that is a very heavy presumption to  
10 overcome. You need to either have the patentee acting as  
11 a lexicographer and given a clear definition in the  
12 specification or there has to be something unclear.

13 The word "a first" and "for presenting" are not  
14 unclear, and that is why IBM has proposed the plain and  
15 ordinary meaning for this term, and it said so for the other  
16 "partition" terms as well.

17 In the alternative, should the Court decide to  
18 construe the term, we propose "a first area for presenting  
19 applications." And the reason for that is that there is a  
20 sentence in the specification that we'll look at in a few  
21 slide from here showing that partitions are areas. The  
22 patentees actually tell us that.

23 So IBM's constructions are faithful to the claim  
24 language. The only change that would be made, should the  
25 Court decide to construe the term, is "partition" to "area."

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1 Let's take a look at the defendant's  
2 construction.

3 They have no basis in the claim language. They  
4 take "a first" and they changed it to "a fixed," so they're  
5 somehow equating "first" with "fixed."

6 There is no definition in the specification that  
7 would suggest that change. And it simply doesn't make sense.

8 Then they take "partition" and they change it to  
9 "portion" and then they add "of the screen."

10 So they added in additional language even though  
11 the parties have already agreed that "partition" and  
12 "portion" are the same thing.

13 Then they take the phrase "for presenting" and  
14 they turn it into, "that is dedicated for displaying."

15 They just made that phrase up. It doesn't  
16 appear anywhere in the specification.

17 The same issue exists with this term, "a second  
18 partition for presenting a plurality of command functions."

19 Again, the parties have agreed that "partition"  
20 gets its plain and ordinary meaning. And,

21 Then "command function," the parties have agreed  
22 on a construction for that as well. That means "a second,"  
23 and "for presenting a plurality of." These are not words  
24 that a jury would have a hard time understanding.

25 Again, IBM's construction is that it should be

1 given its plain and ordinary meaning or in the alternative  
2 to change "a second partition for presenting a plurality of  
3 command functions" to "a second area for presenting a  
4 plurality of command functions." And that again is based on  
5 a sentence in the specification.

6 If we look at Groupon's construction, they take  
7 "a second," and they change it to "a fixed." So now, they  
8 have told us that first is fixed and they also said that  
9 second is fixed.

10 We have already talked about the "partition"  
11 being changed to "portion" of the screen. They added "of  
12 the screen" there.

13 And the next term, "for presenting," they  
14 changed it again to, "that is dedicated to displaying."

15 And then they take "a plurality of command  
16 functions," they remove the phrase "a plurality of" and they  
17 add this whole phrase at the end, "which does not overlap  
18 with the fixed portion of the screen that is dedicated for  
19 displaying applications."

20 Again, that is a limitation that that sentence  
21 is made up. It doesn't exist anywhere in the specification.  
22 So they're clearly adding unstated specifications in the  
23 claims.

24 For the '849 patent, we have similar issues.

25 The parties agree that "structuring applications" can be

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1 construed as "formatting applications" but then for the rest  
2 of the claim, the one change that IBM has proposed, should  
3 the Court decide to construe the term and, again, our  
4 position it should be given its plain and ordinary meaning,  
5 but should the Court decide to construe it, would be to  
6 change "the first portion" to "the first area."

7 The defendants, they take, "may be presented"  
8 and they changed it to "are displayed." So there is a  
9 potential that is implicated in the "may be presented."

10 They get rid of that and they change it to "are displayed."

11 Then for the phrase "through the network," they  
12 just delete it entirely. They do the same thing with  
13 "first" and "fixed" again. Now "at a first portion,"  
14 they're changing it to "on a fixed portion."

15 And then they're adding, they take out "of one  
16 or more" and "of display." So "of one or more screens of  
17 display" just becomes "of the screen." And then they add  
18 on, "that is dedicated to displaying applications." And  
19 again, that phrase doesn't appear anywhere.

20 And then this is the fifth term, "at a second  
21 portion of one or more screens of display concurrently with  
22 applications."

23 And the same issues exists here. I'm not going  
24 to belabor the point.

25 I would like to turn to slide 26 because I think

1 what is important to keep in mind is when you look at these  
2 disputed partition terms together, they're kind of three  
3 limitations that Groupon is trying to add in that the  
4 partitions have to be fixed, that they have to be dedicated  
5 to displaying applications, and that they have to be  
6 non-overlapping.

7 None of those words with the exception of  
8 "fixed," and I'll talk about that in a minute, none of  
9 those words appear in the claims or in the specification.

10 The single instance where "fixed" appears in  
11 conjunction with "the partition" is in a preferred  
12 embodiment of the command functions.

13 So this is a clear example of trying to add  
14 unstated and unsupported limitations into the claims. And  
15 it doesn't work. Why?

16 Well, for one example, with respect to whether  
17 partitions are fixed, the partitions from the specification  
18 that they're citing are merely preferred embodiments, and  
19 we'll look that at that in just a moment.

20 With respect to the partitions being dedicated  
21 to displaying specifications, the specification discloses  
22 that some partitions, like a body partition, may also  
23 contain a window partition. So it's not just dedicated to  
24 displaying applications. It's doing other things.

25 And then with respect to the non-overlapping

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1 term, the specification discloses overlapping partitions.

2 These just have no business being in the claim  
3 language.

4 So turning to the first point that the  
5 partitions have to be fixed.

6 Again, the presumption that the claim language  
7 should be given its ordinary customary meaning is a heavy  
8 one, and the parties have already agreed that the partition  
9 has a plain and ordinary meaning, so none of the other words  
10 in the claim language require any clarification. And  
11 Groupon hasn't pointed to any definition where the patentee  
12 said, oh, when we said "partitions" we mean "fixed."

13 Just to explain where we got the "areas for  
14 partitions" or "areas for portion," it's taken directly out  
15 of the specification. So should the Court decide to  
16 construe the term, IBM's proposed construction is correct  
17 because the applicant -- the patentees have told us pages  
18 are divided into separate areas called partitions, so they  
19 have told us that partitions are areas.

20 Now, the specification explicitly tells us that  
21 partitions are not fixed. And it is helpful here to walk  
22 through the description. It tells us that applications  
23 presented at the reception system are partitioned into  
24 objects. That each application partition typically represents  
25 one screen or partial screen of information including fields

1 filled data. And then it says, in the second excerpt from the  
2 '967 patent, the objects are structured in accordance with an  
3 architecture that permits the displayed data to be relocatable  
4 on the screen.

5 So if the data that composes a partition can be  
6 located within the screen, then the partitions are not fixed.

7 The claims themselves also give us information  
8 about this. If we take a look at claim 17, it says: The  
9 method of claim 1 wherein generating the first and second  
10 screen partitions include generating the respective  
11 partitions at fixed, predetermined regions of the display  
12 screen.

13 So if partitions were already understood and  
14 meant to be fixed, then there would be no need to specify  
15 that the first and second screen partitions for claim 17  
16 need to be generated at fixed predetermined regions.

17 Now, contrary to their argument, they say that  
18 the application requires that, the specification requires  
19 the applications to be bound to particular partitions.

20 And the language that they rely on is actually a  
21 definition of applications that appears in the specification:  
22 Application, i.e. information events, are composed of a  
23 sequence of one or more pages.

24 Nothing about that says that the applications  
25 have to be bound to particular partitions and, in fact, if

1 display data is relocatable, reusable, and dynamically  
2 created. So if you take a look at the specification, we're  
3 told that display text and graphics and program instructions  
4 and control data are formulated from pre-created objects.  
5 And then it says, the objects are structured in accordance  
6 with an architecture that permits the displayed data to be  
7 relocatable on the screen, and to be reusable to make up  
8 other screens and other sessions, either as pre-created and  
9 stored sessions or interactive sessions, dynamically created  
10 in response to the user's requests.

11 So these words "relocatable," "reusable,"  
12 "dynamically created," this is how the invention works.  
13 There is absolutely nothing fixed about it.

14 Can we go to slide 49, please?

15 Another issue that is common to this dispute for  
16 the "partition" term is their contention that the partitions  
17 have to be dedicated to displaying applications.

18 And this is a little bit of a backdoor argument  
19 to their argument that the partitions are fixed. So for the  
20 same reasons that I just discussed, these partitions are not  
21 fixed, they're not dedicated for displaying applications.

22 In addition, this phrase "dedicated to  
23 displaying application," they made it up. It doesn't appear  
24 anywhere in the specification or the prosecution history.  
25 And there is no reason to deviate from the language that the

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1 we look at the figures in the patent, take a look at Figure  
2 3a on the bottom left of slide 34, you can see the body  
3 partition is divided into two rectangles on the left-hand  
4 side. And when you look at the depiction in Figure 3b, the  
5 body partition is a solid rectangle taking up the middle  
6 of the screen.

7 So different pages of the application can be  
8 displayed using different partitions. They're not fixed.

9 This is the language that they're referring to  
10 that I mentioned earlier where it describes the partition as  
11 being fixed. It says in preferred form, the method features  
12 steps for presenting the command function in a command bar  
13 fixed-located on the display screen.

14 So the one time where the patentees do use this  
15 word "fixed," it is in a preferred form. It's an embodiment  
16 of the command functions.

17 They also point to page format objects as  
18 examples to support their position.

19 But those again are merely embodiments. And  
20 they're, as we can see in the description at Figure 5a which  
21 describes the foreign objects, that it's a schematic diagram  
22 that illustrates the configuration of the page template  
23 object which might be used and may be practiced, it's not  
24 required.

25 In addition, the '967 patent discloses that the

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1 patentee chose to use to describe their invention.

2 In addition, Figure 3a of the '967 patent tells  
3 us that the body partition is not dedicated to displaying  
4 application, because it can display other types of data like  
5 the data that appears in the window partition.

6 The specification states that, "the method  
7 features steps for opening windows over the currently  
8 displayed application to present further information  
9 concerning the application or facilitate the undertaking of  
10 interactive operation with respect to the application."

11 So the body partition is displaying within that  
12 window partition. It is not just displaying the application.

13 The last limitation that they're adding, that  
14 the partitions have to be non-overlapping. That is directly  
15 contradicted again by the figure that I just showed you.  
16 The specification describes an embodiment where the window  
17 partition overlaps with the body partition. We see that in  
18 Figure 3a of the '967 patent. And, by the way, it also  
19 appears in the '849 patent.

20 That construction also excludes an embodiment  
21 that the inventors have told us about.

22 You can see that it says, "functions supporting  
23 the user-partitioned application interface can be performed  
24 using the command bar or its equivalent using pull down  
25 windows or an overlapping cascade of windows."

1 So just to illustrate this for Your Honor.  
 2 The first part of the sentence is talking about  
 3 an application interface can be performed using a command  
 4 bar as depicted in Figure 3a. And then the second part of  
 5 that description, it's equivalent using pull down windows  
 6 is contemplating a situation where, rather than having a  
 7 command function here, they are pulled down from underneath  
 8 the rest of the display. And,  
 9 Then there is also an example of an overlapping  
 10 cascade as we can see in the '967 patent at column 17, lines  
 11 24 through 27.  
 12 Now, for the '849 patent, there is claim  
 13 language that says, this is where this term appears "at a  
 14 second portion, one or more screens of the display  
 15 concurrently with the application." And,  
 16 The claim language says that, "the advertising  
 17 data from an advertising object may be presented at a second  
 18 portion of one or more screens of display concurrently with  
 19 applications."  
 20 Well, we know, as we just saw in the previous  
 21 slide, that the windows can overlap, the window partitions  
 22 can overlap. And we also know that the advertisements can  
 23 be included in the window partition.  
 24 It says in the bottom left-hand excerpt,  
 25 advertising is provided over the network and may be included

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1 in any partition of a page.  
 2 That excerpt also appears in the '849 patent at  
 3 column 9, lines 65 through column 10, line 1.  
 4 So what the claim is telling us, that the  
 5 advertising data may be presented at a second portion of one  
 6 or more screens of display. There is nothing that requires  
 7 it to be nonoverlapping.  
 8 I want to address briefly what they have to say  
 9 about the tessellated or tiled display.  
 10 The first thing I want to note, they say, well,  
 11 the specification tells us page format objects assure  
 12 tessellation on tiling.  
 13 Firstly, the page format objects are again a  
 14 preferred embodiment; and we can see that in the excerpt  
 15 from the '967 patent at column 11, lines 17 through 24.  
 16 In addition, they're talking about an analogy.  
 17 They say, okay, they use the word "tiling" and if you think  
 18 about tiling, we think of the word "mosaic" and that means  
 19 not overlapping.  
 20 First of all, I don't know if that is true.  
 21 Secondly, we don't know what they meant by  
 22 tiling. And there are types of tiles that do overlap. They  
 23 could have been referring to, for example, when you think  
 24 about roof tiles, those overlap. But if we have to get to  
 25 the point of debating the meaning of tiling in a preferred

1 embodiment, then we're very far afield from what the  
 2 patentees told us using the plain language of the claims.

3 Can we go to page 67, please.

4 So in summary, they're making changes to the  
 5 plain language of the claim terms that are arbitrary,  
 6 they're not supported. None of their terms are found in  
 7 the patent or the claims. There are no definitions, and  
 8 with the exception of that one word "fixed" from the  
 9 preferred embodiment, and there is no absence of clarity  
 10 that would require this.

11 They added requirements that are derived from  
 12 non-limiting embodiments. We saw that with the preferred  
 13 embodiment of the command functions in a fixed partition.  
 14 It's just a preferred embodiment. It doesn't mean that you  
 15 add it in as a claim limitation.

16 And then they ignore key language from the claim  
 17 terms like when they substitute "dedicated" to "displaying  
 18 applications for presenting."

19 So these limitations don't have any basis in the  
 20 claim terms. The patentees told us what the words mean in  
 21 the claims themselves. And in light of the fact that the  
 22 parties have already agreed what "partitions" mean, what  
 23 "portions" mean, what "applications" mean and what "command  
 24 functions" mean, when you take all of that out and you are  
 25 left with the remaining words, those are not words that

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1 require further construction.

2 Thank you.

3 THE COURT: Thank you. We'll hear from defendant.

4 MR. HADDEN: Thank you, Your Honor.

5 So I'm going to break these up a little bit, the  
 6 partition by partition, but try not to make it too slow.

7 THE COURT: All right. But you do or do not  
 8 agree that the five terms present the same disputes?

9 MR. HADDEN: I think they largely present  
 10 similar disputes. There is a little difference in the  
 11 arguments but I think the notion is basically the same.

12 And it starts with the ordinary meaning of  
 13 "partition;" right? When you partition something, you  
 14 divide it into separate regions; right? Either by walls  
 15 or by borders or, in this case, by page format objects.

16 And the specification essentially defines  
 17 partition in this patent, right? Pages are divided into  
 18 separate areas called "partitions;" right?

19 It goes on to explain that partitions are  
 20 different than windows. It says "while certain other  
 21 objects describe windows." So windows in the patent are not  
 22 partitions. Partitions are separate regions.

23 And that is what is shown in Figure 3a. And  
 24 the important thing in Figure 3a throughout the patent's  
 25 description of partitions in these page format objects that

1 define them is that the partitions divide up the screen  
2 display apart from whatever content is being displayed;  
3 right? So this is like the backdrop and it divides up how  
4 this screen is set up. It is not a feature of a particular  
5 application; right?

6 So you can plop your application into your  
7 body partition but the region that is defined for that  
8 application to be displayed is predefined by these  
9 partitions. And that is what the patent explains. And it  
10 does it, as I said, using these page format objects. And,

11 The patent is very clear that it does this to  
12 ensure this uniform look and feel so that when you switch  
13 between applications, using that command bar partition at  
14 the bottom, the rest of the page looks the same. And,

15 The patent explains that these page format  
16 objects define fixed regions; right? They have an origin  
17 and a dimension, and they even specify the background color  
18 of which the information may be presented.

19 So all of this is defining the structure of the  
20 screen display apart from the application and apart from the  
21 content. Partitions are not features of the application. And,

22 The patent explains, one of the reasons it does  
23 this is so that the screen display is properly tested. That  
24 is the partitions are not overlapping and the whole screen  
25 is full.

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1 If you look at the claim language, I think it  
2 is important and it clarifies this; right? It talks about  
3 generating at least a first partition for presenting  
4 applications.

5 So you generate the partition. The partition  
6 is there for you then to display applications within. The  
7 partition is separate from the application. It is not  
8 defined by the application. And,

9 IBM seems to agree that in the patent, the  
10 partition for displaying applications is in body partition  
11 which is shown as 260. And in Figure 3b, there is an  
12 example of the Apple application being presented within  
13 the application partition, body partition 260.

14 Now, IBM disputes or their argument is that  
15 because there are two different portions of the display does  
16 not mean they have to be "fixed" or "separate." But the  
17 definition of "partition" requires separate regions. That  
18 is what a partition is. That is how it's defined in the  
19 patent. And,

20 In fact, IBM said they are taking their  
21 construction and that definition which says pages are  
22 divided into separate areas. If they're separate areas,  
23 partitioned, they're nonoverlapping.

24 Now, their argument that the partitions don't  
25 have to be fixed, and we heard that again just now, is all

1 taking descriptions from the patent of these page element  
2 objects and how they can be relocated and dynamically  
3 created, et cetera.

4 That has nothing to do with the partitions;  
5 right? The patent is very clear. Page element objects  
6 specify the content of the application. They hold the text  
7 and the graphics that define the application data that is  
8 going to be displayed. And the way they get shown on the  
9 screen is they get mapped to a partition.

10 So they are relocatable because they can be  
11 assigned to different partitions, but the partitions  
12 themselves are fixed. You have the fixed partitions. You  
13 can plop your page element object into whichever partition  
14 you want by assigning it that partition's number. And,

15 That is what the patent says: The partition  
16 number is used in page element call segments so that an  
17 association is established between a called page element  
18 object and the page partition where it is to be displayed.

19 So you can put your page element object in  
20 different partitions by assigning them to different  
21 partition numbers.

22 THE COURT: But you do agree, though, that the  
23 page element objects are relocatable.

24 MR. HADDEN: Oh, absolutely. Yes, yes.

25 THE COURT: Not fixed.

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1 MR. HADDEN: No, not fixed. And they can be  
2 used in different applications and on different pages but  
3 they have nothing to do with the partitions. The partitions  
4 are defined by the page format objects and they are fixed.  
5 And the patent explains that. Page format objects 502  
6 describes the location and size of partitions on the page  
7 and numbers assigned to each partition.

8 So you have the partition has a number, you  
9 associate it with some content by giving that page element  
10 object to that partition number.

11 IBM has this argument that somehow partitions  
12 are not fixed and can be overlapping because you can open  
13 windows. But,

14 Again, both the claims and the specification  
15 explicitly distinguish windows from partitions. Sometimes  
16 they call the windows window partitions. But if you look  
17 at claim 14, which is a dependent claim that goes to this  
18 idea about opening a window, it describes the application  
19 partition, and then says you can overlay it with window  
20 partitions which it also calls windows.

21 And, again, as we saw, the specification  
22 distinguishes them. The description of 3a talks about  
23 partitions, 250, 260, 280, and 290, and window 275. And,

24 Most clearly in that definition that IBM is  
25 drawing its construction from of "partitions," the patent

1 explicitly defines partitions and it separately describes  
2 windows and in fact says the windows are made of different  
3 objects than the partitions. The partitions -- windows are  
4 not partitions.

5 So IBM argues that the partitions are not  
6 dedicated. So the claim says, "partition for displaying  
7 applications" which means that is the partition where  
8 applications are displayed. If you want to say you can  
9 display anything in that partition because you can put a  
10 window on it, but that doesn't change the underlying  
11 partition. The partition is still fixed. It has the same  
12 content. That you can open a window over it does not change  
13 as the patent explains the base page which is the partition.

14 In fact, the patent goes on and explains that  
15 when you open up a window over a partition, the underlying  
16 bit map to the partition itself is preserved and is exposed  
17 again once you close the window. The partition persists but  
18 there is nothing about opening the window that modifies or  
19 changes the partition. And,

20 Again, I think even the part that IBM put up,  
21 when you open the window over the application, you are  
22 still getting information about the application or a way to  
23 interact with the application. So even if you want to treat  
24 the window as somehow modifying the partition, which it  
25 doesn't, everything in that partition is still dedicated to

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1 the application.

2 This is from IBM's brief. And at this part they  
3 say, well, even though the claim says that the partition is  
4 for displaying application, it could display other content.  
5 So basically application partition can display anything,  
6 according to IBM.

7 But if you get there, right? If a partition is  
8 not separate, and it is not fixed, and it can display  
9 anything, what is it? Right? How is that a limitation at  
10 all?

11 In fact, you can see from IBM's contentions that  
12 it's nothing. It's just a box they make up; right?

13 So this is what IBM says is the first partition  
14 for presenting applications. They just drew a red box  
15 around somebody's screen display of the Groupon home page.  
16 And the problem -- well, there are a lot of problems with  
17 this.

18 The first is if you see where it is cut off at  
19 the bottom, that is just arbitrary. That is just how much  
20 of the Groupon home page happened to be displayed on that  
21 person's browser which is not something that Groupon even  
22 specifies. That is just a function of your browser settings  
23 and how long, how large your window it is.

24 So IBM says, well, the partition is defined by  
25 this body tag. So it starts with the top body tag and ends

1 with the body, bottom body tag, and that is the HTML, the  
2 limiter of the first partition.

3 But if that were true -- right? -- those tags do  
4 limit the entire Groupon home page. So what is between  
5 those tags are all of these screens. So if the user was  
6 going to look at the Groupon home page to limit it by those  
7 body tags, they would have to go scroll through all of those  
8 screens.

9 THE COURT: What you have just shown us would  
10 have appeared in succeeding --

11 MR. HADDEN: Succeeding screens, right.

12 THE COURT: So it's going, which I scroll --

13 MR. HADDEN: I scroll down if I have the browser  
14 set up like this, right? So we get all the way down here.

15 So the question is how is that collection of  
16 screens a partition of a screen display, right? Where  
17 is the division on the screen that is somehow fixed or  
18 separate? It's not. It is just a Web page that you can  
19 display over multiple screens.

20 You get down to the bottom and right, that is  
21 the end tag.

22 So this is just, there is no partition here,  
23 there is a Web page, and they drew a box on what has to be  
24 shown on a one person screen.

25 We go to the second partition, we have the same

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1 kind of problem. Just to be clear, you have to have a first  
2 partition and a second partition, and fortunately the  
3 command partition has to persist and be independent of the  
4 application because you have to be able to move between  
5 applications using the commands in that partition. And,

6 Again, that is shown in 3b how at this command bar  
7 partition. And it is described in some of the invention.  
8 And it says it can be fixed, replicated on the display screen,  
9 e.g., at the screen bar.

10 So their argument on this again goes to this popup  
11 window. And they try to say, no, the command partition is not  
12 this bar. It could be this popup window. But, again, that  
13 is not what the patent says, right? So the patent describes  
14 one mechanism for moving between applications where you can  
15 select the command like the jump command from the command bar  
16 partition, and that will open a window, and then you can put  
17 in a keyword or select an index to pick a new application  
18 from that window. But that window is not a partition; right?  
19 So this is the dependent claim that describes that very  
20 embodiment.

21 We provide the navigation procedure to new  
22 applications which include presenting a window.

23 So the window is distinct from the command  
24 partition, the patent specification and the claim. So that  
25 window did not change the meaning of "partition." And,



1 Again, if we look at what IBM is pointing to, it  
 2 gets even more absurd. So here, again, they say the first  
 3 partition is whatever is shown on your screen. And,  
 4 Then they say for claim 1, the second partition  
 5 is this box at the top which has some link in a certain box.  
 6 Then for dependent claim 3, they say no, the  
 7 command partition is this box over here or maybe it is both  
 8 boxes; right?  
 9 But all of that is within what they said is the  
 10 first partition. So there is no separation here. You have  
 11 what they claim is the application partition which is your  
 12 whole screen and then they're just drawing boxes within it.  
 13 So why are they picking these boxes? Well,  
 14 presumably because they have a link. So presumably IBM's  
 15 argument is if you have a link, that is a command, so we'll  
 16 drop boxes around where you have links and say that is the  
 17 command partition.  
 18 The problem with that, of course, is that  
 19 everything on this page is a link; right? All of these  
 20 images are links. I click on the lion, I get details on the  
 21 zoo trip or whatever it is, right? Everything is a link.  
 22 So are those commands? How do you know, how do I know  
 23 whether those are part of my command partition? And,  
 24 If you go down the page, of course, there is  
 25 hundreds of these. And when we get down to the bottom,

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1 right? So maybe IBM will say, well, picture links are  
 2 different. Those aren't commands. Fine. I got this.  
 3 "View All Deals," is that a command? Is that  
 4 part of the command partition? How am I possibly going to  
 5 know?  
 6 All right. Then you have this whole collection of  
 7 browse by city links. You can click on any city. Is that  
 8 part of a command application or part of the application? How  
 9 would I know?  
 10 Same here. Favorite group coupons, company  
 11 information, all of these are just collections of links;  
 12 Right? You can draw a box around anything on this page you  
 13 want and tell me it's a command bar partition or an  
 14 application. I have no way to know it.  
 15 So then we go to the '849. A similar issue;  
 16 right? We have to have a partition for advertising and a  
 17 partition for applications. And,  
 18 Again, it's clear from the claims that these  
 19 things have to be separate. You have structure applications  
 20 so they're on one portion. You structure advertising on  
 21 another portion. It's got to be separate so you can see it  
 22 concurrently with the application.  
 23 Again, the patent is very clear about this ad  
 24 partition region. And not only was it clear in the patent,  
 25 this is exactly what they told the Patent Office; right?

1 Application could be presented at a first part of the screen  
 2 and advertising presented separately and concurrently at a  
 3 second part of the screen.  
 4 They told the Patent Office that this  
 5 distinction between advertising and applications was key to  
 6 their invention. That is basic dichotomy of separate  
 7 treatment. Display of advertising was the key to the '849  
 8 patent.  
 9 Now we go to the contentions again.  
 10 Again, they circled whatever is on the user  
 11 screen as the first partition. And then they circle some  
 12 boxes within it and say that those are -- oops, sorry --  
 13 those are the ad partitions, or the ad partition. So they  
 14 circle random boxes within the application and say that is  
 15 an advertising partition.  
 16 I mean this is particularly bizarre for Groupon;  
 17 right? Groupon's business is to offer local deals. So if  
 18 their Web page is an application, those deals have to be the  
 19 application. But now they're saying those deals are also  
 20 the advertising.  
 21 So how do I know where my advertising partition  
 22 is? How do I know where my application partition is? How  
 23 do I know the difference between an advertisement and an  
 24 application? And,  
 25 Then I got the whole command problem where

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1 they're just circling links where everything on my page is a  
 2 link.  
 3 Now, IBM says that -- and this is kind of gives  
 4 up the farm, I think; right? They say even if the invention  
 5 enables the display application portion and advertising  
 6 portion, that does not mean it requires it.  
 7 Well, if the claim doesn't require an  
 8 advertising partition or portion and application portion,  
 9 what does the claim require; right? There is no limitation  
 10 at that point at all.  
 11 You've got structure applications to be  
 12 displayed at one portion, advertising another. They have to  
 13 be treated different. And,  
 14 IBM goes on and says, trying to back away from  
 15 what it told the Patent Office, that there is no reason that  
 16 a dichotomy means that they must be fixed or non-overlapping.  
 17 That, Your Honor is just absurd. The definition  
 18 of a dichotomy is two mutually exclusive or contradictory  
 19 things. You can't tell me that the Patent Office that the  
 20 key to my invention is the dichotomy between advertising and  
 21 applications and then come in here and say they can be the  
 22 same, which is what IBM is doing.  
 23 Finally, with respect to their argument that  
 24 advertising and applications don't have to be separate, they  
 25 say that you can display advertising over applications in

1 windows. They apparently cite something in the patent.

2 But if you look at what the patent says, it  
3 doesn't say that at all. The section they cite says: If  
4 further partitions for concurrently displaying, for example,  
5 an additional application which may include advertising.

6 It says you can have an advertising partition.

7 When it talks about windows, the windows display  
8 information related to the application.

9 So that is not what the patent says. And, of  
10 course, that is what the patent actually shows, a separate  
11 ad partition.

12 So at the end of the day, if partitions are not  
13 fix, nonoverlapping and dedicated, they are phantoms. They  
14 are not limitations and IBM can just draw boxes anywhere it  
15 wants. And that can't go to the jury.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 Is there any response?

19 MS. STEPLER: Yes, Your Honor.

20 Your Honor, I just want to point out I'm not  
21 quite sure why Groupon is arguing about our infringement  
22 contentions. They're entirely irrelevant to the claim  
23 construction process.

24 So I don't know why they are going on about it.  
25 They might not agree with our infringement read, but that is

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1 certainly an issue that kind of should be taken up later.

2 The second issue that I want to point out is  
3 that the selection of the partition on their website was,  
4 for example, their entire website here.

5 You can't see all of this in the excerpts that  
6 is up here, but it was their entire website, and it is based  
7 on their own HTML code. You can see on the right we have  
8 excerpted the code. We had to put an ellipses in because it  
9 was a big portion of it, but it is tied directly to the code  
10 so it wasn't arbitrary.

11 THE COURT: So when you drew the red line at the  
12 bottom of what we can see, that was not really where you  
13 were drawing the line. You intended for it to be at the  
14 very bottom of what you scrolled through.

15 MS. STEPLER: Yes. I suppose we could have  
16 zoomed out in a great amount and had everything be very  
17 small. But when we identified, for example, the command  
18 partitions, we drew a box around those. And so in this  
19 instance, it's just that it was a lot according to their  
20 code so that is why it looks the way it does.

21 THE COURT: On the dispute about whether there  
22 are certain aspects of the screen need to be dedicated or  
23 required or intended to do certain things, doesn't your  
24 infringement read at least become elucidating, if not  
25 relevant?

1 MS. STEPLER: Well, I think if we look back at  
2 what the patent is telling us, and there is even an excerpt  
3 from the patent that talks about what happens when you do  
4 have a partition explaining application when a popup window  
5 comes up, and that is really what should be controlling here.

6 This is the '849 patent, and in column 11,  
7 beginning on line 58. And as we look, it tells us that window  
8 objects include the display and control data necessary to  
9 support window partitions. Windows contain display data which  
10 overlay the base page and control data which supersede the  
11 base page control data for the underlying screen during the  
12 duration of the window. It says display data within windows  
13 overlay the base page until the window is closed.

14 And then when you look to the top of column 12,  
15 it says when the window is closed, the saved bit map is  
16 swapped onto the screen, the logic functions associated with  
17 the window are disabled, and prior logic functions are  
18 reactivated.

19 So the patent is telling us that these  
20 partitions are not dedicated to displaying applications and  
21 we have to go with what the patent is telling us. We can  
22 have the fight later on about whether or not there is  
23 infringement there, but that is just not the right thing to  
24 be thinking about now.

25 THE COURT: Do you agree that windows are not

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1 partitions in this patent?

2 MS. STEPLER: No, Your Honor. In fact, one of  
3 the images that opposing counsel put up from the claim 14,  
4 it talks about window partitions. I mean I don't know how  
5 much more clear I can get. It's referring to windows as  
6 window partitions, and again the description of Figure 3a,  
7 if we go to slide 52, it is labeled as a window partition.

8 And the other thing that I would point out is a  
9 lot of their argument is, basically, they added all of these  
10 words into the claims. They stuffed them all in there and  
11 now they're saying, oh, well, you haven't shown us that they  
12 shouldn't be there when there is no reason to add them to  
13 begin with.

14 Unless Your Honor has any further questions?

15 THE COURT: No, thank you.

16 Mr. Hadden, is there anything you want to add on  
17 this?

18 MR. HADDEN: The only point, Your Honor, is to  
19 go back to this slide where the patent actually defines  
20 partitions and then says windows are different. So despite  
21 the labeling of window partitions, the definition of  
22 "partition" in the patent does not include windows. And  
23 there is no claim in which the application partition or the  
24 first partition or the second partition is described as a  
25 window but every time there is a window in the claim it is

1 called either a window or window partition. So both the spec  
2 and the claims clearly distinguish windows from partitions.

3 THE COURT: Okay. Thank you.

4 What is next?

5 MR. OUSSAYEF: Your Honor, Karim Oussayef again.  
6 We'll move on to the dispute concerning the term "objects."

7 THE COURT: Okay.

8 MR. OUSSAYEF: Your Honor, I'll keep this  
9 argument brief since we addressed this during the *Priceline*  
10 case.

11 I think the key thing to recognize here is that  
12 both parties agree that "objects" are "data structures."  
13 And the question is are they more specific to data structures?

14 Based on a definition in the '967 patent which  
15 also appears in the '849 patent at column 5, lines 49  
16 through 58, objects have a uniform, self-describing format  
17 known to their RS 400. I think that is a key idea that the  
18 patent was seizing on because the reception system needs to  
19 make sure that objects are uniform.

20 That doesn't mean that they are all the same  
21 exact type of object, but they need to be one of a variety  
22 of enumerated type of object, and the reception system must  
23 know how to process them. That is how you are able to  
24 offload a processing from the host to the reception system.

25 IBM relied on the fact that objects were capable

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1 of being processed by the PC in the prosecution history.  
2 That is how you offset processing from the host to the  
3 reception system.

4 That's on slide 73. And,

5 IBM also defined, distinguished the Filepp  
6 inventions based on the fact that there is a prescribed,  
7 i.e., uniform, structure. So there is an enumerated set of  
8 objects. Today they might be JSON objects or JPEG objects  
9 or GIF objects but they have a uniform format which is  
10 specific to that type of object.

11 Now, I think what is important to go back to is  
12 the Court's reasoning for declining to adopt a more lengthy  
13 definition of "objects" was based on the fact that claim 1  
14 of the '967 patent has some of that language built in and  
15 therefore it is implicit in the term.

16 I think applying an explicit definition for  
17 "objects" would remove any ambiguity, and it would make sure  
18 that the word "object" remains consistent from the '967  
19 patent to the '849 patent and the other uses of the term  
20 objects elsewhere. So that would be a benefit to adopting  
21 that additional language.

22 Thank you, Your Honor.

23 THE COURT: Is there anything that has changed?  
24 Is there anything different here than what we dealt with  
25 previously?

1 MR. OUSSAYEF: I think the key point that is a  
2 little bit different is that some of the reasoning behind  
3 the Court's decision was to make sure that there is no  
4 duplicative language in the '967 patent. I think that might  
5 be overridden by the principle that the term should mean the  
6 same thing no matter where it appears. And because of that,  
7 it makes sense to have "objects" be an explicit definition  
8 that applies to the '849 patent as well rather than the  
9 concern that it might be duplicative which really doesn't  
10 create that much confusion because if it's in there already,  
11 it doesn't add anything that is more difficult to interpret.

12 THE COURT: Well, I think that was only one of  
13 the reasons we gave. I mean wasn't there also an issue  
14 about prosecution history and whether you are arguing for  
15 disclaimer and whether you are trying to import limitations  
16 from the specification?

17 MR. OUSSAYEF: I believe Your Honor is referring  
18 to the prosecution history argument that IBM made in the  
19 previous case as well. But that prosecution history was  
20 supporting IBM's definition. There is nothing that's --  
21 that wasn't an argument that was made by defendants in the  
22 previous case to try to fight back against the definition  
23 of "objects."

24 THE COURT: Right. My recollection was you  
25 argued those things, and we were not persuaded by them;

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1 correct?

2 MR. OUSSAYEF: Yes. That is right, Your Honor.

3 THE COURT: So I'm just a little uncertain about  
4 your characterization of the earlier analysis being all we  
5 did was say what the plaintiffs want to do would render some  
6 claim language superfluous and suggesting I think that was  
7 all that was going on with that dispute. Is that what you  
8 are suggesting?

9 MR. OUSSAYEF: No, Your Honor. I did not mean  
10 to suggest that. That was one of the bases of the prior  
11 opinion. So based on that understanding which I understand  
12 to be one of the influencing factors for the Court's  
13 decision, I think if you are taking that into account, it  
14 makes sense to incorporate it into the '849 patent. That  
15 is all we said. I didn't mean to imply that was the only  
16 basis for the Court's decision.

17 THE COURT: Okay. Thank you.

18 MR. OUSSAYEF: Thank you.

19 THE COURT: I'll hear from defendant.

20 MR. HADDEN: Thank you, Your Honor.

21 We think you got it right last time, Your Honor.  
22 That objects "should" be "data structure."

23 Let me make a couple of points there. There is  
24 an interesting fudge going on that I think Your Honor should  
25 be aware of which is the patents says objects have an

1 uniform self-defining format, right? And IBM is trying to  
 2 kind of use that language to add the construction, obviously  
 3 to try to buttress its 101 defense. But they're tweaking  
 4 it and they have done it a couple ways in their different  
 5 constructions and you heard it here today.

6 IBM's counsel said, well, we don't actually  
 7 mean that objects have a uniform structure. We mean that  
 8 there is some uniformity for different types of objects. So  
 9 Object A may have a structure that is uniform to it, Object  
 10 B will have a structure that is uniform to it, but we're not  
 11 saying all the objects have the same structure which is what  
 12 the patent says, right?

13 The Prodigy patent, the Prodigy system, they all  
 14 have the same structure; right? They would have different  
 15 data but they have a format that is all laid out in there.  
 16 They're not claiming that. What they're trying to claim now  
 17 is use that language but let's read data objects as having  
 18 whatever structure we need it to have.

19 So they have changed the "a uniform" to plural,  
 20 that are known, but that is just kind of meaningless; right?  
 21 Once you say a data structure has a structure that is known,  
 22 all that means is you have a data structure. And,

23 They even said, they said that basically in their  
 24 brief as well; right? They say "uniform object" means that  
 25 the object that has a specific structure according to a type

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1 of object. They're not uniform across objects. They just  
 2 say it's a type; right?

3 So this is just kind of just gutting the actual  
 4 language from the spec of any meaning and trying to add it  
 5 to the claim to just give a little window dressing for their  
 6 101.

7 And that strategy is completely clear when again  
 8 you look at their contentions, when they say data objects  
 9 can be about anything, HTML, Javascript, JSON files, images  
 10 and data, anything; correct?

11 If it's known by the reception system, all it  
 12 means is it works; right?

13 You have a data structure that your application  
 14 can deal with, it's known to the reception system. But  
 15 they're not saying the data is any specific solution. They  
 16 just say carve things up into some structures, and it will  
 17 work. We'll claim that.

18 THE COURT: What is the relevance of the  
 19 infringement contentions? Or I suppose another way to ask  
 20 it, is it fair for me to consider that?

21 MR. HADDEN: Absolutely fair, Your Honor. So  
 22 the question is, claim scope at the end of the day; right?  
 23 And we get a little vision as to what the claim scope is and  
 24 what they're going to say their expert is going to say. And  
 25 particularly when they're putting forward these ordinary

1 meaning constructions; right? Ordinary meaning is a black  
 2 box until someone gets up and says, well, that is what  
 3 ordinary meaning is.

4 To me, for example, the ordinary meaning of  
 5 "partition" is "a separate non-overlapping region." I  
 6 thought that is what the ordinary meaning was. But they're  
 7 going to get up and say, no, it is this mosaic of boxes.  
 8 Well, we need to know that beforehand, so that we can tailor  
 9 the construction to actually clarify what is allowed and  
 10 what is not allowable.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Is there any rebuttal?

14 MR. OUSSAYEF: Just briefly, Your Honor, on the  
 15 issue of whether it makes sense to look at infringement  
 16 contentions.

17 The case of *SRI International v Mitsubishi*  
 18 *Electric Corporation of America*. That is 775 F2d 1107 from  
 19 the Federal Circuit, 1985. It's very clear that first you  
 20 analyze, first you construe the claims, and then you apply  
 21 it to the accused products to determine infringement. And  
 22 the reason why it is, really, so that there is a focus on  
 23 the intrinsic evidence as opposed to the extrinsic evidence  
 24 versus where the focus should be. So I just wanted to  
 25 clarify that point.

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1 With that, Your Honor, unless there is anything  
 2 further.

3 THE COURT: Is there anything further?

4 MR. HADDEN: I would say, Your Honor, there is  
 5 a ton of cases that say you can look at infringement to  
 6 understand the nature of the dispute. And that is what  
 7 we're doing here. Thank you.

8 THE COURT: You can move on to the next one.

9 MR. OUSSAYEF: My colleague, Michael  
 10 Matulewicz-Crowley will take the next one.

11 THE COURT: Okay. Good morning.

12 MR. MATULEWICZ-CROWLEY: Good morning, Your Honor.  
 13 (Elmo settings adjusted.)

14 MR. MATULEWICZ-CROWLEY: May it please the  
 15 court, Michael Matulewicz-Crowley on behalf of IBM.

16 Your Honor, the next disputed term is  
 17 "selectively storing advertising objects at a store  
 18 established at the reception system."

19 This term is unique to the '849 patent.

20 IBM's proposed construction of this term  
 21 revisits the meaning of selectively storing and its previous  
 22 construction in the *Priceline* litigation.

23 The specification and the structure of the  
 24 claims of the '849 patent show that selectively storing  
 25 concerns storing in accordance with a predetermined storage

1 criterion and not prefetching and storing in anticipation of  
2 display concurrently with the applications.

3 IBM's proposed construction comes directly from  
4 the specification itself. As we can see on the slide 78,  
5 the specification defines "selectively storing" as "a means  
6 to selective store objects according to a predetermined  
7 storage criterion."

8 This passage, this definition from the  
9 specification has been directly imported into IBM's proposed  
10 construction.

11 Additionally, it is this definition of  
12 "selectively storing" that is crucial to the patents  
13 inventive ability to reduce the systems response time as  
14 seen in the passage on the bottom of slide 78.

15 Groupon's response to this clear definition in  
16 the specification is that advertising objects are somehow  
17 intrinsically different from the objects referenced in the  
18 specification's definition of selectively storing.

19 But this is not true because as can be seen on  
20 slide 79, objects are actually a family of six different  
21 types of objects, including advertising objects.

22 The specification goes on to explain on the  
23 bottom of slide 79, that advertising objects are  
24 substantially similar to all of the other types of objects,  
25 including page element objects which are in charge of

1 slide 81, the fact that claim 8 claims "selectively supplied  
2 to and retrieved at" shows that "selectively" does not  
3 inherently include a retrieval limitation. Otherwise, claim  
4 8's recitation of "retrieved at" would be superfluous.

5 Further, the fact that claim 8 explicitly claims  
6 a "retrieved at" limitation shows that claim 1, which does  
7 not include any retrieval language, does not include a  
8 "retrieved at" limitation.

9 Further, even to the extent that the "retrieval"  
10 language in claim 8 is relevant to claim 1, neither claim 1,  
11 nor claim 8 include a prefetching limitation. This can be  
12 seen most clearly from claim 9 on the bottom of slide 81  
13 which depends from claim 8.

14 Claim 9 explicitly includes a prefetching  
15 limitation as a part of the supplying limitation.

16 Claim 9 and its explicit claim of prefetching  
17 shows that when the patentee intended prefetching to be a  
18 claimed limitation, they knew how to do it. Therefore, the  
19 fact that claim 1 and claim 8 do not include these explicit  
20 language shows that they do not include these limitations.

21 The specification also supports IBM's  
22 proposition because where the specification uses the term  
23 "selectively," it does so in accordance with IBM's proposed  
24 construction.

25 For example, on slide 83 on the first excerpt

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1 displaying non-advertising displays on a screen.

2 Additionally, the specification treats all  
3 objects the same, whether they display application data or  
4 whether they display advertising data.

5 As an example, you can see on slide 80 that the  
6 specification refers to objects when it clearly is referring  
7 to objects that display applications and advertising.

8 In this instance, the specification uses the  
9 word "object" to mean all objects.

10 And the '849 patent does not support the  
11 proposition that objects, when used in the specification,  
12 actually means all objects except for advertising objects.

13 The '849 patent also doesn't support the  
14 contention that selectively storing involves prefetching.

15 So first we can see from the structure of the  
16 claim language that claim 1 does not include a prefetching  
17 limitation. The previous construction of "selectively  
18 storing" in the *Priceline* litigation rested in part on the  
19 conclusion that the term "selectively" as used in claim 1  
20 includes a retrieval limitation. This conclusion was  
21 based on claim 8's recitation of "selectively supplied to  
22 and retrieved at."

23 However, the use of "selectively" in claim 1 and  
24 claim 8 actually cuts the other way and supports IBM's  
25 proposed construction. This is because as you can see on

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1 from the specification, the specification tells us that  
2 advertising and application objects are selectively  
3 distributed in the service network in accordance with a  
4 predetermined plan.

5 This use of "selectively" is directly analogous  
6 to IBM's use in the proposed construction of "selectively  
7 storing" meaning storing according to a predetermined  
8 storage criterion.

9 In contrast, the specification never uses the  
10 words "selectively" and "prefetching." In fact, they, the  
11 word "selectively" and "prefetching" are never used together  
12 at all.

13 "Prefetching" is in fact used in a preferred  
14 embodiment as part of a specific module that might be used  
15 but may not be and is not a claimed element of the patent.

16 "Selectively storing" should not be limited to  
17 this specific preferred embodiment, especially in light of  
18 the clear definition given earlier in the specification.

19 Groupon's proposed construction also morphs the  
20 single step of storing into two steps, storing and prefetching,  
21 even though the specification makes clear that storing and  
22 prefetching are separate steps.

23 For example, on slide 85, we see that the  
24 specification tells us that there are two ways to minimize  
25 the time required to reduce, to display a page. The first

1 is that objects are stored locally. And the second is that  
2 objects have been prefetched.

3 These are -- the specification is telling us  
4 that these are two different methods. For these reasons,  
5 selectively storing does not include a prefetching limitation.

6 THE COURT: All right. The plaintiff has just  
7 over four minutes left, but let me ask you, is it possible  
8 for me to agree and adopt your construction without saying I  
9 was wrong in the earlier case?

10 MR. MATULEWICZ-CROWLEY: We have provided  
11 additional reasons. I think they are applicable. You know,  
12 it is the same specification. We have provided additional  
13 reasoning and evidence in this litigation for you to adopt  
14 our proposed construction, but I do think it is the same  
15 specification.

16 THE COURT: Okay. Thank you.

17 We'll hear from defendant.

18 MR. HADDEN: Okay. And I think you were wrong  
19 in the prior case, Your Honor. I think you are right.

20 "Selectively storing," going back just a step,  
21 right?

22 The key to the '849 patent is this dichotomy  
23 the separate treatment of advertising. So what does that  
24 actually mean?

25 It means that a local system pre-fetches the

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1 advertising, stores them locally. So when there is an empty  
2 ad slot to fill, it can pop one up from the local storage  
3 and display it. That is the whole point. So it's not  
4 battling against the application over the network to get  
5 content. It pre-fetches it and stores it locally. That is  
6 selective storing, right?

7 There is no point in selectively storing the ad  
8 after you have already shown it to the user. The point is  
9 to selectively store it beforehand, you pre-fetch them, you  
10 store them and then you show them when there is a need to  
11 show an ad without having to go back to the network. That  
12 is the whole point of the patent.

13 And that is what the abstract describes; right?  
14 Storing and managing advertising at the user reception  
15 system so that the advertising can be prefetched from the  
16 network and staged in anticipation of being called for  
17 presentation.

18 You pre-fetch it, that is the same as  
19 selectively storing it. You store it, you need an ad and  
20 you show it from the local store.

21 Thank you.

22 THE COURT: Thank you.

23 Is there any rebuttal on this term?

24 MR. MATULEWICZ-CROWLEY: Your Honor, I just want  
25 to briefly address that. Two issues.

1 The first is that the portion from the prosecution  
2 history that the defendant's counsel just referenced was  
3 specifically with regards to a prior art reference that did  
4 not include advertising at all. So the dichotomy, the  
5 distinction between advertising and applications that IBM was  
6 raising in that instance is merely making the point that the  
7 '849 patent concerns advertising, which is not something that  
8 IBM is disputing now.

9 Additionally, I just want to point out that  
10 although Groupon's counsel references that the '849 patent is  
11 all about prefetching advertising, what they have not been  
12 able to do in any of the cited portions of the specification  
13 is to show how any tie or connection between selectively and  
14 prefetching any place where the language of the claim is  
15 referenced in the specification.

16 I also, Your Honor, just want to clarify my  
17 previous answer. It was not as clear as possible. Adopting  
18 our construction in this litigation would require you to  
19 overturn or change your previous construction of the same  
20 term in the *Priceline* litigation.

21 THE COURT: Okay. Thank you for that.

22 Is there anything further on this term?

23 MR. HADDEN: No, Your Honor.

24 MR. MATULEWICZ-CROWLEY: No, Your Honor.

25 THE COURT: All right. IBM.

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1 MR. OUSSAYEF: Your Honor, just a point of  
2 clarification. I understand the parties might update Your  
3 Honor about a discovery issue. Does that count as part of  
4 our time, just to make sure?

5 THE COURT: There will be under two minutes  
6 left. I am going to have to let you update me after the two  
7 minutes.

8 MR. OUSSAYEF: Okay. Great.

9 Just briefly on "continuations." I think the  
10 key thing is that both -- oh, yes. Let me ... (Adjusting  
11 Elmo settings.)

12 Yes, I think the key thing with the term  
13 "continuations" is that both parties understand that not all  
14 requests are continuations. So construing the term  
15 "continuation" as a new request that a client may send to  
16 the server is unclear because there are some examples where  
17 the client sends a new request to the server which is not a  
18 continuation.

19 And Groupon's own brief says that when the  
20 client leaves or interrupts the conversation by typing in  
21 a URL, that is at the top of slide 103, that that's not a  
22 continuation. So given that there is some situations where  
23 a request is not a continuation, the definition needs to be  
24 clarified in order to indicate that it is a new request in a  
25 continuation.

1 That would incorporate the entire definition  
2 from the glossary of terms rather than just the small  
3 subsection of continuation as a new request which a client  
4 may send to the server.

5 THE COURT: Okay. I'll hear from defendant.

6 MR. HADDEN: Shall I use all the rest of my  
7 time?

8 THE COURT: Yes. Well, he has 29 seconds left,  
9 so ...

10 MR. HADDEN: Just kidding. I just want to get  
11 up and shoot fish in a barrel with no response.

12 So it's a little more complicated than that,  
13 Your Honor. First, Your Honor, the construction of  
14 "continuation" is correct. We see it comes straight from  
15 the glossary of the patent.

16 Now, the issue that IBM's counsel raised is a  
17 red herring. The claim itself requires that the continuation  
18 is in an output that is returned to the user. All such  
19 continuations are -- all such links are continuations per this  
20 definition; right?

21 So stepping back; right? IBM's game with respect  
22 to these terms is to try to avoid the "all continuations"  
23 requirement so that they can point to just a few links on a  
24 Web page and say that infringes. You can ignore all the rest  
25 of the links because those are either not continuations, not

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1 in a conversation, or not returned by a service. And those  
2 arguments are all clearly wrong.

3 So let me just go forward; right? Part of  
4 what they're trying to do is insert conversation into this  
5 construction so that they can define a conversation to be  
6 something that is some logically related exchange so they  
7 can draw a box.

8 But that is wrong. The claim, or the patent  
9 explicitly describes and defines conversation. What it says  
10 is, on the Web, hypertext links represent continuations and  
11 a client engages in a conversation whenever it follows  
12 hypertext links.

13 So what that means is any time I'm clicking on a  
14 link, I'm in a conversation. The conversation is continuing.  
15 The only way to get out of conversations as the patent  
16 explains is if I explicitly request a new URL. So I type a  
17 new URL into my browser instead of clicking on a link on a  
18 page. That's the only way you exit a conversation. And,

19 If that isn't clear enough, the other definition  
20 that the patent actually provides a mathematical definition of  
21 conversation; right? And it says, more importantly, it's a  
22 series of HTML pages -- p1 through pn, and if I get from p2 to  
23 pn where the client views them all, right?, for i because i is  
24 between 1 and n, HPI is obtained by pi - 1.

25 So what does that mean? That means as long as

1 I'm looking at Web pages, and I'm getting from page to  
2 page by clicking on a link from the prior page, I am in a  
3 conversation. Okay? So as long as I'm following links,  
4 that is by definition a conversation.

5 It doesn't then depend on who I'm talking to on  
6 the other end. It doesn't depend on whether that link goes  
7 to the same server or different server. It doesn't depend  
8 on what the Web page is talking about or what that link  
9 relates to. It's a very formal definition. As long as I'm  
10 clicking on links, I'm in a conversation. And,

11 That is required because if you could click on a  
12 link and not keep this state information, then the whole  
13 system in this patent breaks. And,

14 Just to make clear, they put in this example in  
15 their opposition brief arguing that when you start with, I  
16 think it would be an airline site and you move to hotel sites  
17 and somehow you changed the conversation, the conversation  
18 stopped, that is all nonsense; right? That is very clear.

19 A client may communicate with multiple servers  
20 during the same conversation, as long as I keep clicking  
21 links in the same conversation. This is the example that  
22 they said showed that the conversations break when you go  
23 to a different server. It says just the opposite; right?  
24 It says I start on the airline site, I click a link to  
25 the hotel site, the conversation continues, the state

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1 information keeps getting passed. The hotel side may be  
2 able to use it, it may not, but it always receives it.

3 Then we get to the all continuations. This is  
4 kind of the similar idea, right? So in trying to say that  
5 all continuations doesn't mean all continuations, because  
6 we can define a service to be something that generates just  
7 certain links. And, again, that is just wrong; right?

8 The output from the service is the Web page;  
9 right? And, again, this is required because as the patent  
10 says, for this method to work you have to embed the state  
11 information in all hyperlinks passed back and forth between  
12 the client and the server. If you have a link that doesn't  
13 have state information, it won't work because the user  
14 can click on that link and then the state is lost forever;  
15 right? And,

16 The abstract describes the same requirement. And,  
17 importantly; right? The patent talks about communicating the  
18 output to the client. So the output to the client is the Web  
19 page that they get back. And the claim also requires that  
20 wherein the state information is preserved, provided to all  
21 services for the duration of the conversation.

22 For that to work, the state information has to be  
23 in every link in their Web page because if not, the user could  
24 click on that link and, whatever that service is, would not  
25 receive that state information during that conversation. And,

1 Again, the patent is clear that the output that  
2 that claim is talking about that goes to the user is the Web  
3 page. They have the IBM example Web page here in the patent  
4 and showing that as the output. So the output is not some  
5 subset of links. It is the page and all the links on them.

6 And the figure shows the same thing. The output  
7 that goes back to the client is the HTML file.

8 So why does this matter? Well, it matters  
9 because again what IBM is trying to do is say, well, we  
10 found these two links on your page that have what we call  
11 state information, so you infringe. Because we're going to  
12 say that those are the output from some service that we'll  
13 identify later. And,

14 That is nonsense because this page has a whole  
15 bunch of links, and all these other links don't have the same  
16 information. So this is not an example of all continuations,  
17 including state information as the patent requires; right?  
18 This page doesn't work. I click on any of these, what they're  
19 calling state information doesn't get sent back. It is not  
20 embedded into any of these links. And,

21 These all continuations, they relied on that in  
22 the IPR. It's throughout the prosecution history. They can't  
23 avoid it now and say any two links will do, which is what  
24 they're trying to do.

25 Thank you.

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1 THE COURT: All right. Do you want to respond  
2 briefly?

3 MR. OUSSAYEF: Yes. Very briefly, Your Honor.

4 What I didn't see is a discussion of their  
5 actual construction. And the reason why is because once  
6 again it rewrites the claim language.

7 "Continuations" is their preferred definition of  
8 "continuations." Okay. That is all right.

9 But why "in an output" means "in a Web page or  
10 other output?" There is simply no language which is  
11 construed from the specification.

12 "From said service" changes to "sent to the  
13 client." So "from" turns to "sent," reversing the order,  
14 and "service" turns to "client," the opposite entity that  
15 should be doing things.

16 If we look at slide 96, we see that their  
17 definition would require "in an output from said service" to  
18 require something to already be sent to the client before  
19 the later step in the claim which requires communicating  
20 something to the client.

21 So their definition would require communicating  
22 something to the client, doing something in that before  
23 you communicate it to the client, which doesn't make sense.

24 THE COURT: All right. Thank you.

25 Do you want to respond?

1 MR. HADDEN: Sure.

2 None of that is right, of course. The output to  
3 the client doesn't have to be communicated. It's generated  
4 before it is sent. This is in our briefs. I think this  
5 part is pretty clear.

6 The main point is "all continuations" means "all  
7 continuations." And there is no dispute that continuations  
8 are links and a conversation is any time you click a link,  
9 so it all fits together.

10 Thank you, Your Honor.

11 THE COURT: All right. Is there anything else  
12 on claim construction from Groupon then?

13 MR. HADDEN: No, Your Honor.

14 THE COURT: All right. Then let's talk just  
15 briefly about discovery. I'm curious as to whether there  
16 has been progress over the weekend, so let me hear first  
17 from IBM on that.

18 MR. OUSSAYEF: Your Honor, my colleague Robert  
19 Harrits will take this issue.

20 THE COURT: Sure.

21 Good morning.

22 MR. HARRITS: Good morning, Your Honor. Roberts  
23 Harrits on behalf of IBM. May it please the Court.

24 Following the Court's Order on Friday, the  
25 parties met and conferred that evening, and during the meet

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1 and confer Groupon agreed to produce and I believe later  
2 that evening did produce some revenue cost and profit  
3 information associated with the accused products.

4 However, there is other financial and sales  
5 information that we have been requesting for some time now  
6 that is still not being produced, and Groupon has not  
7 provided us a date by which they will be producing these  
8 documents: things like patent licenses, financial future  
9 forecasts of the future revenue growth, marketing documents,  
10 commercial studies about the accused features, or any  
11 potential documents related to the value of the accused  
12 features. And,

13 Given that these discovery responses have been  
14 outstanding since December and Groupon has not said they're  
15 not going to produce these documents, we think it would be  
16 beneficial for the Court to order a reasonable date certain  
17 by which Groupon will produce these other requested documents.

18 THE COURT: And what about the distinction  
19 between North American revenue and U.S. revenue? Did you  
20 make progress on that?

21 MR. HARRITS: Yes, we have. They have  
22 produced a document which they say should be able to help us  
23 de-aggregate that data. We haven't had a chance to fully  
24 analyze it with our experts to know whether it will do as  
25 they allege it will.



1 THE COURT: All right. Is there anything else?  
 2 MR. HARRITS: That is it unless Your Honor has  
 3 other questions.

4 THE COURT: Not yet. So let me hear what  
 5 Groupon's position is.

6 Good morning.

7 MR. HAACK: Good morning, Your Honor.

8 I think what Mr. Harrits said is generally  
 9 accurate. Groupon produced a bunch of data on Friday. To  
 10 the extent that the information they moved on, the revenues,  
 11 cost profits broken down in various ways is not complete, I  
 12 believe it is, Groupon wanted us to produce that data.

13 On the issue of the U.S./Canada revenues, the  
 14 issue there is that Groupon does not in the ordinary course  
 15 of business disaggregate Canada from its North American  
 16 business. It reports on a North American basis.

17 The information we provided to IBM at this point  
 18 is I believe revenue information. It doesn't disaggregate  
 19 cost or profits because Groupon doesn't keep that and to do  
 20 that involves going through every single transaction at  
 21 Groupon and deciding whether it should allocate cost or  
 22 profits to that transaction.

23 The information that IBM was given is based on  
 24 Groupon as separate Canadian entities that report revenue,  
 25 so we disaggregated that revenue from the U.S. revenue,

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1 provided the breakdown of North American into U.S. and  
 2 Canada.

3 And I should say this for the record. For the  
 4 purposes of North American revenue, that means U.S. and  
 5 Canada, not Mexico for Groupon.

6 As to the patent licenses, the marketing  
 7 documents, Groupon hasn't refused to produce any of this  
 8 information. When I spoke to Mr. Harrits on Friday, I  
 9 represented we would be happy to give that to them.

10 IBM didn't raise that as a thing they were  
 11 moving to compel or conversations leading up to the motion  
 12 to compel. It asked for revenues, cost profits,  
 13 disaggregated into the ways Your Honor saw in the briefing.

14 I don't think there is a need for an order to  
 15 produce those documents, and Groupon hasn't refused to  
 16 produce anything and particularly on the marketing documents,  
 17 patent licenses. I'm not aware the parties have conferred  
 18 on that at all. Certainly in the conversations I have been  
 19 involved in in the last month or six weeks, we have not.

20 THE COURT: Well, what is the date on which  
 21 you propose to produce the remaining materials that they've  
 22 mentioned in their letter to me they want?

23 MR. HAACK: I don't have a date certain for  
 24 right now, Your Honor. I'm sure we can get licenses out  
 25 this week. I know what the volume of that is.

1 THE COURT: What, from your perspective, is a  
 2 reasonable date by which you would agree to produce what  
 3 all they asked for in the letter?

4 MR. HAACK: I think by the end of the month, we  
 5 can do that, Your Honor. Before that would, I think it  
 6 might be difficult to get all that out in that time period,  
 7 particularly the marketing documents that certainly is under  
 8 the scope of what that would be.

9 THE COURT: All right. Mr. Harrits, is the end  
 10 of the month reasonable?

11 MR. HARRITS: Yes it is, Your Honor.

12 THE COURT: All right. Well, does that take  
 13 care of what is in dispute on discovery?

14 MR. HARRITS: I believe for what is currently in  
 15 dispute. Yes.

16 THE COURT: Do you agree with that?

17 MR. HAACK: Yes.

18 THE COURT: Okay. Well, then I do order that  
 19 defendant will produce what was at issue in the letter and  
 20 discussed here today by the end of this month.

21 MR. HAACK: Thank you, Your Honor.

22 THE COURT: All right. Is there anything  
 23 further from IBM?

24 MR. TRAINOR: No, Your Honor.

25 MR. OUSSAYEF: No, Your Honor.

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1 MR. TRAINOR: Thank you.

2 THE COURT: Is there anything further from  
 3 Groupon?

4 MR. HADDEN: No. Thank you, Your Honor.

5 THE COURT: Thank you for that helpful argument.  
 6 We will be in recess.

7 (Claim construction and motion hearing ends at  
 8 11:54 a.m.)

9  
 10 I hereby certify the foregoing is a true and accurate  
 11 transcript from my stenographic notes in the proceeding.

12 /s/ Brian P. Gaffigan  
 13 Official Court Reporter  
 14 U.S. District Court  
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<p><b>tied</b> <sup>[1]</sup> - 79:9</p> <p><b>tier</b> <sup>[1]</sup> - 5:17</p> <p><b>tiled</b> <sup>[1]</sup> - 63:9</p> <p><b>tiles</b> <sup>[2]</sup> - 63:22, 63:24</p> <p><b>tiling</b> <sup>[5]</sup> - 63:12, 63:17, 63:18, 63:22, 63:25</p> <p><b>TLI</b> <sup>[1]</sup> - 45:21</p> <p><b>today</b> <sup>[5]</sup> - 2:20, 46:10, 83:8, 86:5, 108:20</p> <p><b>together</b> <sup>[8]</sup> - 17:11, 17:22, 34:21, 36:24, 50:23, 56:2, 93:11, 104:9</p> <p><b>ton</b> <sup>[1]</sup> - 89:5</p> <p><b>took</b> <sup>[1]</sup> - 25:20</p> <p><b>tool</b> <sup>[2]</sup> - 48:7, 48:9</p> <p><b>top</b> <sup>[4]</sup> - 71:25, 74:5, 80:14, 97:21</p> <p><b>total</b> <sup>[1]</sup> - 48:22</p> <p><b>totality</b> <sup>[1]</sup> - 46:13</p> <p><b>touches</b> <sup>[2]</sup> - 6:1, 45:8</p> <p><b>toward</b> <sup>[2]</sup> - 30:3, 44:18</p> <p><b>TRAINOR</b> <sup>[2]</sup> - 108:24, 109:1</p> <p><b>transaction</b> <sup>[2]</sup> - 106:20, 106:22</p> <p><b>transcript</b> <sup>[1]</sup> - 109:10</p> <p><b>transfer</b> <sup>[1]</sup> - 14:18</p> <p><b>transferred</b> <sup>[1]</sup> - 17:10</p> <p><b>transition</b> <sup>[1]</sup> - 34:23</p> <p><b>transmitting</b> <sup>[1]</sup> - 9:24</p> <p><b>Tranxition</b> <sup>[2]</sup> - 6:24, 6:25</p> <p><b>treat</b> <sup>[1]</sup> - 70:23</p> <p><b>treated</b> <sup>[1]</sup> - 77:13</p> <p><b>treatment</b> <sup>[2]</sup> - 76:7, 94:23</p> <p><b>treats</b> <sup>[1]</sup> - 91:2</p> <p><b>tried</b> <sup>[1]</sup> - 14:4</p> <p><b>trip</b> <sup>[1]</sup> - 74:21</p> <p><b>true</b> <sup>[9]</sup> - 13:20, 17:3, 43:11, 44:22, 48:24, 63:20, 72:3, 90:19, 109:10</p> <p><b>truth</b> <sup>[1]</sup> - 23:23</p> <p><b>try</b> <sup>[7]</sup> - 25:11, 44:3, 65:6, 73:11, 84:22, 86:3, 98:22</p> <p><b>trying</b> <sup>[16]</sup> - 14:10, 16:22, 16:23, 32:7, 47:22, 56:3, 56:13, 77:14, 84:15, 86:1, 86:16, 87:4, 99:4, 101:4, 102:9, 102:24</p> <p><b>turn</b> <sup>[3]</sup> - 50:3, 53:14, 55:25</p> <p><b>turning</b> <sup>[1]</sup> - 57:4</p> <p><b>turns</b> <sup>[2]</sup> - 103:13, 103:14</p>	<p><b>tutorial</b> <sup>[2]</sup> - 10:6, 13:24</p> <p><b>TV</b> <sup>[1]</sup> - 26:1</p> <p><b>tweaking</b> <sup>[1]</sup> - 86:3</p> <p><b>Two</b> <sup>[19]</sup> - 8:13, 15:14, 22:17, 27:13, 27:14, 30:20, 30:21, 31:15, 32:1, 32:5, 33:2, 35:16, 39:2, 39:18, 40:16, 44:12, 45:24, 46:4, 49:1</p> <p><b>two</b> <sup>[15]</sup> - 4:17, 21:4, 24:25, 29:10, 59:3, 67:15, 77:18, 93:20, 93:24, 94:4, 95:25, 97:5, 97:6, 102:10, 102:23</p> <p><b>type</b> <sup>[11]</sup> - 8:24, 13:16, 15:18, 38:21, 40:9, 82:21, 82:22, 83:10, 86:25, 87:2, 99:16</p> <p><b>types</b> <sup>[5]</sup> - 61:4, 63:22, 86:8, 90:21, 90:24</p> <p><b>typically</b> <sup>[1]</sup> - 57:24</p> <p><b>typing</b> <sup>[1]</sup> - 97:20</p>	<p>86:9, 86:10, 86:19, 86:24, 87:1</p> <p><b>uniformity</b> <sup>[1]</sup> - 86:8</p> <p><b>unique</b> <sup>[3]</sup> - 16:16, 18:15, 89:19</p> <p><b>UNITED</b> <sup>[1]</sup> - 1:1</p> <p><b>unless</b> <sup>[4]</sup> - 49:4, 81:14, 89:1, 106:2</p> <p><b>unlike</b> <sup>[2]</sup> - 24:22, 25:1</p> <p><b>unpatentable</b> <sup>[1]</sup> - 11:8</p> <p><b>unstated</b> <sup>[2]</sup> - 54:22, 56:14</p> <p><b>unsupported</b> <sup>[1]</sup> - 56:14</p> <p><b>up</b> <sup>[53]</sup> - 11:11, 13:2, 14:20, 14:21, 14:22, 15:4, 17:3, 17:12, 17:21, 18:24, 19:19, 20:2, 20:9, 22:22, 25:4, 29:22, 30:9, 32:21, 36:23, 40:11, 41:3, 42:5, 42:20, 45:24, 46:23, 47:9, 48:15, 49:19, 53:15, 54:21, 59:5, 60:7, 60:23, 65:5, 66:1, 66:3, 66:4, 70:15, 70:20, 71:12, 72:14, 77:4, 79:1, 79:6, 80:5, 81:3, 87:16, 88:2, 88:7, 95:2, 98:11, 107:11</p> <p><b>update</b> <sup>[2]</sup> - 97:2, 97:6</p> <p><b>URL</b> <sup>[3]</sup> - 97:21, 99:16, 99:17</p> <p><b>useful</b> <sup>[3]</sup> - 28:13, 38:20, 50:6</p> <p><b>user</b> <sup>[28]</sup> - 14:19, 14:25, 15:1, 17:13, 17:20, 18:3, 19:16, 20:5, 20:13, 21:22, 33:24, 38:18, 40:8, 42:2, 42:6, 43:7, 43:13, 50:9, 61:23, 72:5, 76:10, 95:8, 95:14, 98:18, 101:13, 101:23, 102:2</p> <p><b>user's</b> <sup>[14]</sup> - 7:16, 17:11, 17:18, 17:22, 18:25, 19:10, 19:11, 20:3, 20:10, 21:20, 48:16, 48:19, 60:10</p> <p><b>user-partitioned</b> <sup>[1]</sup> - 61:23</p> <p><b>users</b> <sup>[5]</sup> - 14:24, 22:7, 27:25, 32:14, 38:18</p> <p><b>users'</b> <sup>[2]</sup> - 24:6, 33:25</p> <p><b>uses</b> <sup>[6]</sup> - 8:20, 43:10, 83:19, 91:8, 92:22,</p>	<p>93:9</p>	<p>101:20</p>	
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# **EXHIBIT 22**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Plaintiff,

v.

GROUPON, INC.

Defendant.

C.A. No. 16-122-LPS-CJB

JURY TRIAL DEMANDED

**GROUPON, INC.'S OBJECTIONS TO PLAINTIFF'S SECOND NOTICE  
OF DEPOSITION TO GROUPON, INC.**

Pursuant to Federal Rules of Civil Procedure 26 and 30(b)(6), Defendant Groupon, Inc. ("Groupon") hereby responds and objects to Plaintiff International Business Machines Corporation's ("IBM") Second Notice of Deposition to Groupon, Inc. as follows:

**GENERAL OBJECTIONS**

Groupon makes the following General Objections to each and every Definition and Topic in Schedules A and B of IBM's Notice of Deposition. Each of these objections is incorporated into Groupon's response to each and every Topic, whether or not separately set forth therein. By failing to specifically refer to or specify any particular General Objection in response to a particular Topic, Groupon does not waive any of these General Objections, nor admit or concede the appropriateness of any purported Topic or any assumptions contained therein.

1. Nothing in these responses should be construed as waiving rights or objections that might otherwise be available to Groupon, nor should Groupon's responses to any of these

Topics be deemed an admission of relevancy, materiality, or admissibility in evidence of the Topic or the response thereto.

2. Groupon objects to each Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon will not provide such privileged or protected information, and any inadvertent disclosure of any privileged or protected information shall not be deemed a waiver of any privilege.

3. Groupon objects to each Topic, and to each Definition that each Topic incorporates, to the extent they impose obligations upon Groupon that are broader than, or inconsistent with, the obligations imposed by the Federal Rules of Civil Procedure, the Local Rules of the District of Delaware, or any applicable Order of the Court, regulation or case law.

4. Groupon further objects to each Topic, and to each Definition that each Topic incorporates, to the extent that it is overbroad, vague and ambiguous, unduly burdensome, oppressive, and not proportional to the needs of this case. Groupon will not provide testimony regarding Topics that are not relevant to a claim or defense in this matter or are not proportional to the needs of the case. Groupon will not inquire of witnesses other than those that could reasonably be expected to have responsive information. Unless otherwise indicated, Groupon shall give the terms of the Topics their ordinary and plain meanings. Groupon shall not be held responsible where its reasonable interpretation of the Topics does not comport with IBM's intentions. Groupon objects to all definitions and Topics that fail to describe the information sought with reasonable particularity or are so unintelligible that Groupon cannot determine what, if any, information is responsive or cannot prepare a witness to testify as to the information.

5. Groupon objects to each Topic to the extent the information sought is already in IBM's possession or equally available to IBM from publicly available sources. Groupon further objects to each Topic to the extent the burden of preparing a witness to testify as to that topic outweighs its likely benefit.

6. Groupon objects to all definitions, instructions, and Topics to the extent that they purport to require Groupon to disclose private or personally-identifiable information of its customers, business partners, or employees. Groupon does not intend to provide such confidential information without the consent of the relevant persons or a court order.

7. Groupon objects to each Topic to the extent it requires Groupon to disclose information that is subject to a protective order, contractual obligation, or other confidentiality obligation owed to any third party. Groupon will disclose such information only in compliance with its obligations to third parties and subject to an appropriate protective order.

8. Groupon objects to each Topic to the extent it requires a legal conclusion of Groupon.

9. Groupon objects to the definition of "Defendant," "You," and "Your" because it seeks to broaden the scope of allowable discovery and seeks information that is not within the possession, custody, or control of Groupon, but is in the possession of third parties and non-parties to this lawsuit. Groupon further objects to the definition of these terms as they include Groupon's attorneys and patent agents and seeks privileged and attorney-work product information. Groupon will interpret these terms as referring to Groupon, Inc.

10. Groupon objects to the definition of "Accused Instrumentality" (or "Accused Instrumentalities," to the extent used in the Topics) as vague and ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it includes

instrumentalities not identified by IBM in its infringement contentions. Groupon further objects that the definition is overbroad and unduly burdensome to the extent it is not limited to any particular accused feature.

11. Groupon objects to the definition of “document” as overbroad, unduly burdensome and oppressive as it seeks to encompass tangible things. Groupon will construe this term to mean any items described in Federal Rule of Civil Procedure 34(a)(1)(A).

12. Groupon objects to the definition of “financial data” as vague and ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case.

13. Groupon objects to the definition of “Transaction Event” as vague and ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case.

14. No incidental or implied admissions are intended by any response by Groupon to any Topic. That Groupon agreed to provide a witness to testify to a Topic is not an admission that Groupon accepts or admits the existence of any alleged facts set forth in or assumed by such Topic, or that the response constitutes admissible evidence.

15. Groupon’s responses are made solely for the purpose of this case.

16. All objections as to competency, relevance, materiality, propriety, and admissibility, are expressly reserved and may be interposed at any other proceeding in this case or any other action.

17. Groupon objects to the later deposition of any witness produced in response to this Notice with respect to any Topic covered by the notice or resulting deposition, whether or not the later deposition is in the deponent’s individual capacity or capacity as a corporate representative.

Without waiver of and subject to the foregoing General Objections, Groupon responds to the Topics as follows.

**SPECIFIC OBJECTIONS AND RESPONSES**

**DEPOSITION TOPIC NO. 1:**

The way in which each of your Accused Instrumentalities:

- a. generate URLs, URIs, or hyperlinks;
- b. allow users to “Sign In”/“Sign Up” and create user accounts, including by using information or data about users from Google or Facebook;
- c. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. use content delivery networks, including those provided by Akamai Technologies, Inc.

**RESPONSE TO DEPOSITION TOPIC NO. 1:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM’s definitions of “Your” and “Accused Instrumentalities.” Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this



Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the operation of the aspects of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period, including generally how Groupon's website generates URLs, URIs, or hyperlinks, how user accounts are created via Google or Facebook, generally how Groupon's accused instrumentalities deliver content to end-users, and generally how the accused instrumentalities set parameters related to caching and use content delivery networks.

**DEPOSITION TOPIC NO. 2:**

The earliest date that the accused features and functionalities of the Accused Instrumentalities, identified in IBM's January 20, 2017 and March 24, 2017 Preliminary Infringement Contentions, were implemented, and in particular:

- a. The date(s) on which You first implemented the ability to cache or store content, including but not limited to menus, images, videos, browser-supported source code (such as JavaScript), and advertisements at each of the Accused Instrumentalities;
- b. The date(s) on which You first implemented the process of embedding information into hyperlinks, internet addresses, URLs, or URIs at each of the Accused Instrumentalities; and
- c. The date(s) on which You first made available to users the option to create an account, at each of the Accused Instrumentalities, using Facebook and/or Google login credentials.

**RESPONSE TO DEPOSITION TOPIC NO. 2:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definition of "You" and "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the earliest date that the accused features and functionalities of the specific Groupon instrumentalities accused of infringement in IBM's January 20, 2017 and March 24, 2017 Preliminary Infringement Contentions were implemented.

**DEPOSITION TOPIC NO. 3:**

All changes to the accused features and functionalities of the Accused Instrumentalities identified in IBM's January 20, 2017 and March 24, 2017 Preliminary Infringement Contentions, beginning on the earliest date that such accused features and functionalities were implemented (i.e., the dates identified in response to Topic 2 herein) through the present and any planned

future changes to such features and functionalities, including but not limited to any changes made as a result of learning of the Patents-in-Suit.

**RESPONSE TO DEPOSITION TOPIC NO. 3:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon further objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting "all changes . . . beginning on the earliest date that such accused features and functionalities were implemented . . . through the present". No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will make reasonable efforts to prepare a witness or witnesses to testify regarding substantial changes to the accused features and functionalities of the specific Groupon instrumentalities accused of infringement in IBM's January 20, 2017 and March 24, 2017 Preliminary Infringement Contentions from the date those

features or functionalities were implemented to the present, and any currently planned changes to such features and functionalities that have yet to be implemented.

**DEPOSITION TOPIC NO. 4:**

The identity and functionality of the source code that affects how each of the Accused Instrumentalities:

- a. generate URLs, URIs, or hyperlinks;
- b. allow users to “Sign In”/“Sign Up” and create user accounts, including by using information or data about users from Google or Facebook;
- c. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- d. set parameters related to caching; and
- e. use content delivery networks, including those provided by Akamai Technologies, Inc.

**RESPONSE TO DEPOSITION TOPIC NO. 4:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM’s definition of “Accused Instrumentalities.” Groupon further objects to this Topic because it is not limited to a relevant time period. Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the terms “identity” and “affects.” Groupon further objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by asking for a witness to identify and explain the operation of a large quantity of source code. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking

information that can be obtained more efficiently through written discovery or document production or inspection and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular source code, Groupon objects as the source code available for inspection would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will reasonably prepare a witness or witnesses to testify regarding the functionality of Groupon's source code that controls the features and operation of the aspects of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 5:**

The identity, functionality, and configuration of any third-party software, hardware, or service, including by not limited to Akamai, Facebook, Google, Amazon Web Services, Fastly, Apache, Optimizely, Varnish, and Edgecast, that affects how each of your Accused Instrumentalities:

- f. generate URLs, URIs, or hyperlinks;
- g. allow users to "Sign In"/"Sign Up" and create user accounts, including by using information or data about users from Google or Facebook;

- h. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- i. set parameters related to caching; and
- j. use content delivery networks, including those provided by Akamai Technologies, Inc.

**RESPONSE TO DEPOSITION TOPIC NO. 5:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your" and "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting testimony regarding *any* third-party software, hardware, or service, particularly given that it is not limited a relevant time period. Groupon further objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the term "identity" and "affects." No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party. Furthermore, Groupon objects to the extent this Topic seeks

information concerning how any third party system affects Groupon; no Groupon-designated witness would be capable of testifying to such third-party information.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding third-party software, hardware, or services that directly impacts how the features and operation of the aspects of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period, and how such third-party software, hardware, or services are configured to the extent that knowledge is within Groupon's knowledge.

**DEPOSITION TOPIC NO. 6:**

Agreements between You and any third party related to how each of your Accused Instrumentalities:

- k. generate URLs, URIs, or hyperlinks;
- l. allow users to "Sign In"/"Sign Up" and create user accounts, including by using information or data about users from Google or Facebook;
- m. deliver content, including HTML, web pages, JavaScript, images, graphics, stylesheets, and font files;
- n. set parameters related to caching; and
- o. use content delivery networks, including those provided by Akamai Technologies, Inc.

**RESPONSE TO DEPOSITION TOPIC NO. 6:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "You" and "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is

neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information regarding agreements with any third party not limited to a relevant time period. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular agreements, Groupon objects as any written agreement would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's non-privileged agreements with third parties that relate to the features and operation of the aspects of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 7:**

The identity, functionality, topology, and configuration of any servers, including third-party servers, that deliver content to users.

**RESPONSE TO DEPOSITION TOPIC NO. 7:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon objects to this Topic to the extent that it seeks information which is neither relevant to



the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information regarding *any* servers, including third party servers, that deliver content to users. Groupon further objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the terms “identity” and “topology.” No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party. Furthermore, Groupon objects to the extent this Topic seeks information concerning internal servers of third parties; no Groupon-designated witness would be capable of testifying to such third-party information.

Subject to the foregoing objections, Groupon will reasonably prepare a witness or witnesses to testify regarding the general identity and location of servers or services that deliver content to Groupon’s end users from Groupon instrumentalities specifically accused of infringement in IBM’s January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 8:**

The number of user accounts at each of the Accused Instrumentalities, created on a monthly basis, from 2010 and continuing through the present.

**RESPONSE TO DEPOSITION TOPIC NO. 8:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the number of Groupon user accounts created during the relevant time period.

**DEPOSITION TOPIC NO. 9:**

On a monthly basis, the total number of Transaction Events made using the Accused Instrumentalities from 2010 to the present.

**RESPONSE TO DEPOSITION TOPIC NO. 9:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Accused Instrumentalities" and "Transaction Events." Groupon objects to this Topic to the extent that it seeks information

which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the total number of sales generated for each of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period, to the extent such information is in Groupon's possession, custody or control and reasonably available.

**DEPOSITION TOPIC NO. 10:**

On a monthly basis, the number of Transaction Events made through the Accused Instrumentalities by users whose accounts were linked to Facebook and/or Google login credentials from 2010 to the present.

**RESPONSE TO DEPOSITION TOPIC NO. 10:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Accused Instrumentalities" and "Transaction Events." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the total number of sales generated via the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions by users whose accounts were created via Facebook and/or Google during the relevant time period, to the extent such information is in Groupon's possession, custody or control and reasonably available.

**DEPOSITION TOPIC NO. 11:**

On a monthly basis, the number of Transaction Events made through the Accused Instrumentalities by users who were logged in using Facebook and/or Google login credentials from 2010 to the present.

**RESPONSE TO DEPOSITION TOPIC NO. 11:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Accused Instrumentalities" and "Transaction Events." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon is willing to meet and confer with counsel for IBM to narrow the information requested by this Topic to information that is relevant to an issue in this case.

**DEPOSITION TOPIC NO. 12:**

On a monthly basis, the total number of unique and non-unique (i.e., returning) visitors to the Accused Instrumentalities, the number of unique and non-unique visitors who disabled cookies, and the percentage of unique and non-unique visitors who disabled cookies from 2010 to the present.

**RESPONSE TO DEPOSITION TOPIC NO. 12:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Accused Instrumentalities." Groupon also objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "unique and non-unique visitors." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by

confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the total number of unique and non-unique visitors, the number of unique and non-unique visitors who disabled cookies, and the percentage of unique and non-unique visitors who disabled cookies on Groupon's desktop and mobile websites during the relevant time period to extent such information is ascertainable and tracked by Groupon in the ordinary course of business.

**DEPOSITION TOPIC NO. 13:**

On a monthly basis, the number of unique and non-unique visitors who disabled caching in their web browser and the percentage of unique and non-unique visitors who disabled caching in their web browser.

**RESPONSE TO DEPOSITION TOPIC NO. 13:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "unique and non-unique visitors." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis and that not tied to the Groupon instrumentalities accused of infringement by IBM or limited by time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it

seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the total number of unique and non-unique visitors who disabled caching in their web browser and the percentage of unique and non-unique visitors who disabled caching in their web browser during the relevant time period to extent such information is ascertainable and tracked by Groupon in the ordinary course of business.

**DEPOSITION TOPIC NO. 14:**

The categories of information stored in cookies regarding visitors to the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 14:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "categories of information . . . regarding visitors." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-



product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the categories of information that is stored in cookies by Groupon regarding visitors to the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 15:**

Any analyses of the impact of latency on users of the Accused Instrumentalities, such as measurements or assessments of the impact of latency on click-through rates, Transaction Event conversions, completed Transaction Events, and abandoned Transaction Events.

**RESPONSE TO DEPOSITION TOPIC NO. 15:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Accused Instrumentalities" and "Transaction Event(s)." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "analyses of the impact of latency on users." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine

or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's analyses of the impact of latency on users of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period, if any.

**DEPOSITION TOPIC NO. 16:**

Control panels, consoles, dashboards, or interfaces for any hosting, caching, or content delivery network service (e.g., Akamai, Fastly, Amazon s3, Amazon, Google, Edgecast), whether in-house or through a third-party for the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 16:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information relating to "control panels, consoles, dashboards, or interfaces for any hosting, caching, or content delivery network service" and that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this

Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the control panels, consoles, dashboards, or interfaces for the hosting, caching, or content delivery network service(s) Groupon utilizes in connection with the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 17:**

Any caching-related instructions or configuration settings in each version of the Accused Instrumentalities (such as Cache-Control, Edge-Control, Pragma, ETag, no-store, no-cache, must-revalidate, max-age, or downstream-ttl) that are set or modified by You or a third party.

**RESPONSE TO DEPOSITION TOPIC NO. 17:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "You" and "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "caching-related instructions or configuration settings." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information relating to "*Any* caching-related instructions or configuration settings in

*each* version” and is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding instructions or configuration settings for caching Groupon has set in connection with the Groupon instrumentalities specifically accused of infringement in IBM’s January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 18:**

The identity of, and the location on the Source Code Computer of, any HTML template files that are used to generate content for each version of the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 18:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM’s definition of “Accused Instrumentalities.” Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the term “identity.” Groupon objects to this Topic to the extent that it seeks information which is

neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information relating to source code for “each version” of the Groupon instrumentalities accused of infringement by IBM and that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular source code, Groupon objects as any source code would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will reasonably prepare a witness or witnesses to testify regarding the general location of HTML template files that are used to generate content for the Groupon instrumentalities specifically accused of infringement in IBM’s January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 19:**

The URL(s), URI(s), or other portions of the Accused Instrumentalities generated by each HTML template file found on the Source Code Computer.

**RESPONSE TO DEPOSITION TOPIC NO. 19:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM’s definition of “Accused Instrumentalities.” Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the

phrase “other portions of the Accused Instrumentalities generated . . . .” Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information relating to “URL(s), URI(s), or other portions . . . generated by *each* HTML template file” and that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular source code, Groupon objects as any source code would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will make reasonable efforts to prepare a witness or witnesses to testify regarding generally how Groupon instrumentalities specifically accused of infringement in IBM’s January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period generate from HTML template files.

**DEPOSITION TOPIC NO. 20:**

The process by which any HTML template files on the Source Code Computer are used to generate content for the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 20:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM’s definition of “Accused Instrumentalities.” Groupon

objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information relating to “*any* HTML template files” and that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the general process by which HTML template files within Groupon’s source code are used to generate content for the Groupon instrumentalities specifically accused of infringement in IBM’s January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 21:**

The HTTP methods (e.g., GET, POST) used in the Accused Instrumentalities to interact with Your servers.

**RESPONSE TO DEPOSITION TOPIC NO. 21:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM’s definitions of “Your” and “Accused Instrumentalities.” Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase “to interact with.” Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not

limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the HTTP methods generally used in the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 22:**

The data formats (e.g., JSON, xml) used in the Accused Instrumentalities to interact with Your servers.

**RESPONSE TO DEPOSITION TOPIC NO. 22:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your" and "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "to interact with." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would



be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the data formats generally used to send data related to Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period between Groupon's servers and end-users.

**DEPOSITION TOPIC NO. 23:**

The parameters and variables (including user IDs, session IDs, and deal IDs) located in hyperlinks in the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 23:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "parameters and variables located in hyperlinks." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would

be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify generally regarding the kinds of components found in hyperlinks in the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 24:**

The communications (e.g., HTTP requests and responses, API calls) between Google or Facebook, Your servers, and the clients or browsers accessing the Accused Instrumentalities, when users "Sign In" to, "Log In" to, "Sign Up" for, or create their user account using Facebook or Google.

**RESPONSE TO DEPOSITION TOPIC NO. 24:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your" and "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this

case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the communications between Google or Facebook, Groupon's servers, and the clients or browsers accessing Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period, when users "Sign In" to, "Log In" to, "Sign Up" for, or create their user account using Facebook or Google.

**DEPOSITION TOPIC NO. 25:**

Your communications and/or interactions with IBM concerning the Patents-in-Suit prior to March 2, 2016.

**RESPONSE TO DEPOSITION TOPIC NO. 25:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Your." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "communications and/or interactions." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the non-privileged aspects of Groupon's communications and interactions with IBM concerning the Patents-in-Suit prior to March 2, 2016.

**DEPOSITION TOPIC NO. 26:**

Your communications with third parties concerning IBM, the Patents-in-Suit, and/or This Action.

**RESPONSE TO DEPOSITION TOPIC NO. 26:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Your." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited by subject matter or time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding non-privileged communications with third parties, excluding consultants, vendors, contractors, and the like, concerning IBM, the Patents-in-Suit, and/or This Action.

**DEPOSITION TOPIC NO. 27:**

Any attempts you have made to avoid infringement or design around the Patents-in-Suit.

**RESPONSE TO DEPOSITION TOPIC NO. 27:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "You." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "attempts." Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's non-privileged efforts, if any, to design around the Patents-in-Suit.

**DEPOSITION TOPIC NO. 28:**

The actual or anticipated cost of avoiding infringement or designing around the Patents-in-Suit.

**RESPONSE TO DEPOSITION TOPIC NO. 28:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon objects to this Topic as premature as it calls for information that will be the subject of expert opinion. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic to the extent that it

seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's estimated actual or anticipated cost of designing around the Patents-in-Suit.

**DEPOSITION TOPIC NO. 29:**

Any allegedly non-infringing alternatives to the inventions claimed in the Patents-in-Suit and the cost and acceptability of such allegedly non-infringing alternatives in the marketplace.

**RESPONSE TO DEPOSITION TOPIC NO. 29:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information relating to "*any* allegedly non-infringing alternatives". No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon objects to this Topic as premature as it calls for information that will be the subject of expert opinion. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by

confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding non-infringing alternatives to the inventions claimed in the Patents-in-Suit and the cost and acceptability of such non-infringing alternatives in the marketplace.

**DEPOSITION TOPIC NO. 30:**

Your knowledge of the Patents-in-Suit, including but not limited to: (i) how and when such awareness came about, (ii) any analysis performed by You or for You to determine whether You infringe the Patents-in-Suit, whether the Patents-in-Suit are valid or enforceable, or whether You should seek to obtain a license to the Patents-in-Suit, (iii) when any such analysis was performed and the persons involved, and (v) any documents that discuss, refer to, or comprise the same.

**RESPONSE TO DEPOSITION TOPIC NO. 30:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other



applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's knowledge of the Patents-in-Suit to the extent there is any discoverable information not protected by the attorney-client privilege.

**DEPOSITION TOPIC NO. 31:**

Any opinion of counsel (whether oral or written) with respect to the Patents-in-Suit, and the documents that discuss, refer to, or comprise the same.

**RESPONSE TO DEPOSITION TOPIC NO. 31:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks

information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding any non-privileged opinion of counsel regarding to the Patents-in-Suit upon which Groupon intends to rely, if any, and the documents that discuss, refer to, or comprise the same, if any.

**DEPOSITION TOPIC NO. 32:**

The factual bases for all of Your defenses (including all affirmative defenses), counterclaims, or requests for relief.

**RESPONSE TO DEPOSITION TOPIC NO. 32:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Your." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its request for the "factual basis for *all* of Your defenses," as this Topic does not "describe with reasonable particularity the matters for examination" as required by Fed. R. Civ. P. 30(b)(6). No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further

objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

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Dated: August 2, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of August, 2017, a true and correct copy of the foregoing document was served on each party through their counsel of record via email.

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*Attorneys for Defendant  
GROUPON, INC.*

# **EXHIBIT 23**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Plaintiff,

v.

GROUPON, INC.

Defendant.

C.A. No. 16-122-LPS-CJB

JURY TRIAL DEMANDED

**GROUPON, INC.'S OBJECTIONS TO PLAINTIFF'S THIRD NOTICE  
OF DEPOSITION TO GROUPON, INC.**

Pursuant to Federal Rules of Civil Procedure 26 and 30(b)(6), Defendant Groupon, Inc. ("Groupon") hereby responds and objects to Plaintiff International Business Machines Corporation's ("IBM") Third Notice of Deposition to Groupon, Inc. as follows:

**GENERAL OBJECTIONS**

Groupon makes the following General Objections to each and every Definition and Topic in Schedules A and B of IBM's Notice of Deposition. Each of these objections is incorporated into Groupon's response to each and every Topic, whether or not separately set forth therein. By failing to specifically refer to or specify any particular General Objection in response to a particular Topic, Groupon does not waive any of these General Objections, nor admit or concede the appropriateness of any purported Topic or any assumptions contained therein.

1. Nothing in these responses should be construed as waiving rights or objections that might otherwise be available to Groupon, nor should Groupon's responses to any of these

Topics be deemed an admission of relevancy, materiality, or admissibility in evidence of the Topic or the response thereto.

2. Groupon objects to each Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon will not provide such privileged or protected information, and any inadvertent disclosure of any privileged or protected information shall not be deemed a waiver of any privilege.

3. Groupon objects to each Topic, and to each Definition that each Topic incorporates, to the extent they impose obligations upon Groupon that are broader than, or inconsistent with, the obligations imposed by the Federal Rules of Civil Procedure, the Local Rules of the District of Delaware, or any applicable Order of the Court, regulation or case law.

4. Groupon further objects to each Topic, and to each Definition that each Topic incorporates, to the extent that it is overbroad, vague and ambiguous, unduly burdensome, oppressive, and not proportional to the needs of this case. Groupon will not provide testimony regarding Topics that are not relevant to a claim or defense in this matter or are not proportional to the needs of the case. Groupon will not inquire of witnesses other than those that could reasonably be expected to have responsive information. Unless otherwise indicated, Groupon shall give the terms of the Topics their ordinary and plain meanings. Groupon shall not be held responsible where its reasonable interpretation of the Topics does not comport with IBM's intentions. Groupon objects to all definitions and Topics that fail to describe the information sought with reasonable particularity or are so unintelligible that Groupon cannot determine what, if any, information is responsive or cannot prepare a witness to testify as to the information.

5. Groupon objects to each Topic to the extent the information sought is already in IBM's possession or equally available to IBM from publicly available sources. Groupon further objects to each Topic to the extent the burden of preparing a witness to testify as to that topic outweighs its likely benefit.

6. Groupon objects to all definitions, instructions, and Topics to the extent that they purport to require Groupon to disclose private or personally-identifiable information of its customers, business partners, or employees. Groupon does not intend to provide such confidential information without the consent of the relevant persons or a court order.

7. Groupon objects to each Topic to the extent it requires Groupon to disclose information that is subject to a protective order, contractual obligation, or other confidentiality obligation owed to any third party. Groupon will disclose such information only in compliance with its obligations to third parties and subject to an appropriate protective order.

8. Groupon objects to each Topic to the extent it requires a legal conclusion of Groupon.

9. Groupon objects to the definition of "Defendant," "You," and "Your" because it seeks to broaden the scope of allowable discovery and seeks information that is not within the possession, custody, or control of Groupon, but is in the possession of third parties and non-parties to this lawsuit. Groupon further objects to the definition of these terms as they include Groupon's attorneys and patent agents and seeks privileged and attorney-work product information. Groupon will interpret these terms as referring to Groupon, Inc.

10. Groupon objects to the definition of "Accused Instrumentality" (or "Accused Instrumentalities," to the extent used in the Topics) as vague and ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it includes



instrumentalities not identified by IBM in its infringement contentions. Groupon further objects that the definition is overbroad and unduly burdensome to the extent it is not limited to any particular accused feature.

11. Groupon objects to the definition of “document” as overbroad, unduly burdensome and oppressive as it seeks to encompass tangible things. Groupon will construe this term to mean any items described in Federal Rule of Civil Procedure 34(a)(1)(A).

12. Groupon objects to the definition of “financial data” as vague and ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case.

13. Groupon objects to the definition of “Transaction Event” as vague and ambiguous, overbroad, unduly burdensome, and not proportional to the needs of the case.

14. No incidental or implied admissions are intended by any response by Groupon to any Topic. That Groupon agreed to provide a witness to testify to a Topic is not an admission that Groupon accepts or admits the existence of any alleged facts set forth in or assumed by such Topic, or that the response constitutes admissible evidence.

15. Groupon’s responses are made solely for the purpose of this case.

16. All objections as to competency, relevance, materiality, propriety, and admissibility, are expressly reserved and may be interposed at any other proceeding in this case or any other action.

17. Groupon objects to the later deposition of any witness produced in response to this Notice with respect to any Topic covered by the notice or resulting deposition, whether or not the later deposition is in the deponent’s individual capacity or capacity as a corporate representative.

Without waiver of and subject to the foregoing General Objections, Groupon responds to the Topics as follows.

**SPECIFIC OBJECTIONS AND RESPONSES**

**DEPOSITION TOPIC NO. 1:**

All revenues (including but not limited to advertising revenue), costs, and sources (including geographic sources) thereof derived by You from, for, or concerning the Accused Instrumentalities, from March 2010 to the present.

**RESPONSE TO DEPOSITION TOPIC NO. 1:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "You" and "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "concerning the Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding revenues, costs, and sources thereof derived from the Groupon instrumentalities accused of infringement by IBM during the relevant time period.

**DEPOSITION TOPIC NO. 2:**

The identity, content, and interpretation of the annual profit and loss statements for Your business unit(s) responsible for each of the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 2:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your" and "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the terms "identity" and "interpretation." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's annual profit and loss statements.

**DEPOSITION TOPIC NO. 3:**

Your pricing policies, strategies, and practices concerning the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 3:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your" and "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "concerning the Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon objects to this topic as vague and ambiguous in that Groupon does not sell or have prices for the Accused Instrumentalities.

**DEPOSITION TOPIC NO. 4:**

Business plans, marketing strategies, go-to-market plans, market projections, and competitive analyses concerning the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 4:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Your" and "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "concerning the Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's general marketing strategies and plans, and any competitive analyses, if any, for the aspects of the Groupon instrumentalities specifically accused of infringement in

IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 5:**

Any evaluation, study, analysis, or investigation about how users interact with the Accused Instrumentalities, including:

- a. the extent to which users interact with the Accused Instrumentalities, including total visitors, unique visitors, non-unique (i.e., returning) visitors, pages per session, session duration, and conversions;
- b. how users interact with the Accused Instrumentalities to search for services and/or navigate through options to make a purchase and/or reservation;
- c. how users interact with the Accused Instrumentalities to create, "Sign In," "Sign Up," or "Log In" to user accounts using Facebook, Google, or any other third-party platform; and
- d. how users interact with the Accused Instrumentalities to store, cache, or interact with any advertisements or menus on the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 5:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "how users interact." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be

obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's plans or studies regarding how users utilize the aspects of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period, if any.

**DEPOSITION TOPIC NO. 6:**

The bases for customer demand or preference for each Accused Instrumentality, including users' preferences for interacting with the Accused Instrumentalities to:

- a. search for services and/or navigate through options to make a purchase and/or reservation where user identification, transaction identification, or other state information is maintained;
- b. create, "Sign In," "Sign Up," or "Log In" to user accounts using Facebook, Google, or any other third-party platform; and
- c. store, cache, or interact with any advertisements, images, or menus on the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 6:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "bases for customer demand or preference." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's understanding of the bases of its customer's demand or preference for the aspects of the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 7:**

Usage data or metrics for the Accused Instrumentalities, such as the extent to which users interact with the Accused Instrumentalities to:



- a. search for services and/or navigate through options to make a purchase and/or reservation where user identification, transaction identification, or other state information is maintained;
- b. create, “Sign In,” “Sign Up,” or “Log In” to user accounts using Facebook, Google, or any other third-party platform; and
- c. store, cache, or interact with any advertisements, images, or menus on the Accused Instrumentalities.

**RESPONSE TO DEPOSITION TOPIC NO. 7:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM’s definition of “Accused Instrumentalities.” Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase “usage data or metrics.” Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent

that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the types of usage data or metrics collected for the Groupon instrumentalities specifically accused of infringement in IBM's January 20, 2017 and March 24, 2017 infringement contentions during the relevant time period.

**DEPOSITION TOPIC NO. 8:**

Any policy, procedure, practice, or program related to licensing (in-bound or out-bound) or use of intellectual property by Groupon, including both written and unwritten policies, procedures, practices, or programs, further including but not limited to patent licensing efforts and Groupon's criteria for taking or offering a license to a patent.

**RESPONSE TO DEPOSITION TOPIC NO. 8:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the phrase "policy, procedure, practice, or program related to licensing." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that

it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding Groupon's established licensing policies or practices during the relevant time period, if any.

**DEPOSITION TOPIC NO. 9:**

The identity, content, interpretation, negotiation, and decision to enter into: (a) any patent license that you have identified or produced in This Action (b) any patent license that pertains to any aspect of any of the Accused Instrumentalities, or (c) any patent license pools that you have entered or in which you have invested.

**RESPONSE TO DEPOSITION TOPIC NO. 9:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objection to IBM's definition of "Accused Instrumentalities." Groupon objects to this Topic as vague, ambiguous, overbroad, and unduly burdensome in its use of the terms "identity" and "interpretation." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting the content and interpretation of any patent licenses and information that is not limited to the relevant time period. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein.

Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the identity of and non-privileged information relating to the negotiation regarding and decision to enter into any patent license that Groupon has identified or produced in this matter, any patent license which relates to technology claimed by the patents-in-suit, or any patent license which relates to the allegedly infringing aspects of the accused Groupon instrumentalities.

**DEPOSITION TOPIC NO. 10:**

From 2010 to the present, on a monthly basis, for each of the Accused Instrumentalities:

- a. The number of queries for deals and/or “Groupons” performed by users in the United States;
- b. The number and nature (i.e., description) of Transaction Events that generated the revenue produced in This Action and the amount of revenue generated by such Transaction Events; and

- c. The number and nature (i.e., description) of advertising-related Transaction Events, such as, for example, purchase of deals and/or Groupons as a result of clicking on advertisements (including but not limited to third-party advertisements) on the Accused Instrumentalities and the revenues resulting from such advertisements.

**RESPONSE TO DEPOSITION TOPIC NO. 10:**

Groupon incorporates by reference its General Objections as if fully set forth herein. Groupon incorporates its objections to IBM's definitions of "Transaction Events" and "Accused Instrumentalities." Groupon objects to this Topic to the extent that it seeks information which is neither relevant to the claims and defenses in this matter nor proportional to the needs of this case, for example by requesting information on a monthly basis. No witness, or reasonably-sized group of witnesses, would be capable of testifying to the subjects therein. Groupon further objects to this Topic as seeking information that can be obtained more efficiently through written discovery or document production and as cumulative and redundant of discovery requests already served by IBM. To the extent this Topic seeks information concerning particular documents, Groupon objects as any document would speak for itself. Groupon objects to this Topic as seeking information that is not within its possession, custody, or control. Groupon objects to this Topic to the extent that it seeks the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine, joint defense privilege, common interest exception, duty of confidentiality, or any other applicable privilege, immunity, doctrine or restriction on discovery. Groupon further objects to the extent that this Topic seeks information protected by confidentiality obligations to any third party; Groupon will not provide such information without appropriate notice to the third party.

Subject to the foregoing objections, Groupon will prepare a witness or witnesses to testify regarding the number and value to Groupon of sales generated by the Groupon website during the relevant time period, and the nature of revenue-generating activities engaged in by Groupon.

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Dated: August 2, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of August, 2017, a true and correct copy of the foregoing document was served on each party through their counsel of record via email.

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